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THE SALE OF FOOD AND DRUGS ACTS, 1875—1907.

THE

SALE OF FOOD & DRUGS ACTS,

1875 TO 1907,

AND

FORMS, REGULATIONS, ORDERS AND NOTICES ISSUED THEREUNDER,

WITH NOTES AND CASES

BY

THE LATE SIR WILLIAM J. BELL, LL.D.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

SIXTH EDITION

BY

CHARLES F. LLOYD,

OF THE INNER TEMPLE AND MIDLAND CIRCUIT, BARRISTER-AT-LAW.

THE CHEMICAL NOTES REVISED AND ENLARGED BY

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PREFACE TO THE SIXTH EDITION.

SINCE the publication of the last Edition of this book the Milk and Dairies Act, 1914, has considerably altered the law as to samples of milk and cream ; and it and the Public Health (Milk and Cream) Regulations, 1912, have strengthened the hands of various public authorities in preventing the sale of adulterated or unwholesome milk. Both of these have been included in the present edition, together with a number of Circular Letters from different Government Departments on various questions arising under the Acts, and a few forms of Information and Summons, which it is hoped may be found useful. To make room for this new matter the other Acts relating to adulteration—such as the Bread Acts and Adulteration of Seeds Acts, which, it is believed, were of little use to most readers—have been omitted from the Appendix.

The case law has been brought up to date, and Mr. ROBINSON has revised and enlarged his Chemical Notes.

C. F. LLOYD.

4, CROWN OFFICE ROW,
TEMPLE, E.C.
October, 1914.

PREFACE TO THE FIRST EDITION.

THIS little Volume is intended to supply a want which it is believed has been felt by persons who are engaged in carrying out the Sale of Food and Drugs Acts.

Great care has been taken to include all cases bearing upon the working of the Acts, and also those in which disputed questions of a chemical nature have arisen.

It is hoped that the book may be found useful not only to those upon whom the working of the Acts devolves, but also to the trade and general public.

WILLIAM JAMES BELL.

1, Plowden Buildings,
Temple, E.C.
May, 1886.

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INTRODUCTION.

THE bulk of the law relating to the adulteration of food is contained in the following Acts :

The Sale of Food and Drugs Act, 1875.

The Sale of Food and Drugs Act Amendment Act, 1879.

The Margarine Act, 1887.

The Sale of Food and Drugs Act, 1899.

The Butter and Margarine Act, 1907.

The Milk and Dairies Act, 1914, ss. 5 and 6 and Schedule III.

Besides the above, the Bread Acts of 1822 and 1836, relating to the adulteration of flour and bread, are still in force, but prosecutions for adulteration under these Acts have gradually become more and more rare, owing mainly to the fact that offences against them are also punishable, and with a heavier penalty, under the Sale of Food and Drugs Acts, and that, while the absence of *mens rea* is a good defence under the Bread Acts, it is not so under the most important sections of the Sale of Food and Drugs Acts.

There are also certain commodities—tea, coffee, and beer—with respect to the adulteration of which certain powers are given to the Commissioners of Customs and the Commissioners of Inland Revenue under the Revenue Acts. A list of these enactments will be found on p. 2.

The Fertilisers and Feeding Stuffs Act, 1906, is a kindred Act to the Sale of Food and Drugs Acts, but

deals solely, as its title shows, with the sale of agricultural fertilisers and food for cattle.

With these preliminary observations we may pass at once to a more detailed examination of the Sale of Food and Drugs Acts themselves. These, by s. 14 of the Act of 1907, are styled collectively "The Sale of Food and Drugs Acts, 1875 to 1907."

ADMINISTRATION.

The Acts are administered by the local authority of each district, and concurrent powers in certain cases are given to the Local Government Board and the Board of Agriculture. In the case of imported articles the administration of the law is in the hands of the Commissioners of Customs. The Local Government Board have also certain powers enabling them to compel a negligent local authority to perform its duties. See ss. 10, 13 and 20 of the Act of 1875, ss. 1, 2 and 3 of the Act of 1899, ss. 2 and 5 of the Act of 1907, and the Milk and Dairies Act.

DEFINITIONS.

The Act of 1875, which is the principal Act, and to which the others are supplementary, commences with the repeal of the previous enactments relating to food adulteration for which it was substituted, the last of which was the Adulteration of Food and Drugs Act, 1872. It then proceeds (s. 2) to a definition of the two words contained in its title—"Food" and "Drug." The definition of "Food" as it originally stood was "every article used for food or drink by man other than drugs or water," but it is now extended by the addition of the words, "and any article which ordinarily enters into or is used in the composition or preparation of human food; and shall also include flavouring matters

and condiments" (s. 26 of the Act of 1899). "Drug" is defined as including "medicine for internal or external use."

PRINCIPAL OFFENCES.

Sections 3 to 9 of the Act of 1875 create two main classes of offences which are punishable under the Acts:

(1)—(a) The mixing of injurious ingredients with any article of food or drug sold or intended to be sold (ss. 3 and 4).

(b) The selling of any article so mixed (ss. 3 and 4).

(2)—(i.) The selling of any article of food or drug which

(a) differs in nature, substance, or quality from the article demanded by the purchaser (s. 6).

(b) being a compounded article of food or drug, is not compounded in accordance with the demands of the purchaser (s. 7).

(ii.)—(a) The abstraction from any article of food sold or intended to be sold of any part of it, so as to affect injuriously its quality, nature or substance, without making disclosure of the alteration (s. 9).

(b) The selling of any article so altered (s. 9).

The main differences between the two classes of offences are, that in the case of (1) it must be shown that the article is injurious to health (or, if it be a drug, that its quality or potency has been injuriously affected), whereas in the case of (2) the fact that the

addition, abstraction, or whatever it may have been, was harmless, is immaterial; that in the case of (1) guilty knowledge is an essential element of the offence, whereas in (2) it is not; and that the penalty under (1) is, of course, much heavier.

That offences of the first class are comparatively rare nowadays, is shown by the following extract from the report of the Select Committee of 1894—1896:

"There is reason to think that the adulteration of food with substances injurious to health has diminished greatly during recent years. Proceedings have rarely been taken under section 3 of the Sale of Food and Drugs Act, 1875, in respect of this class of offences. No doubt this may partly be accounted for by the fact that it would in no case be an easy matter to obtain convictions under the section referred to, because it is necessary to prove that the adulteration is dangerous to health, and that the person charged with the adulteration has guilty knowledge of the same. Moreover, it is to be borne in mind that the punishments which may be inflicted for offences of this character are more severe than those imposed by the provisions of the Act which relate to adulteration with harmless substances. But whatever may be the cause of the diminution of this description of offences, it is satisfactory to note the same."

For the second class of offences, s. 6 is the all-important section, and under it the bulk of the prosecutions under the Sale of Food and Drugs Acts are instituted. Although its provisions have been made the subject-matter of a number of reported cases, the tendency of the decisions throughout has been to widen, rather than to curtail, its scope. It is now well recognised that the primary object of these Acts is not so much the punishment of those who deserve to be punished, as the protection of the public at large, and, therefore, the seller of an adulterated article is liable to a conviction under this section, even though he may be

nnocent of any attempt to cheat his customers, and though the actual offender (who can, of course, also be punished) may be a servant, or even a person over whom he has no control.

Section 7, which refers to compounded articles, is little used, inasmuch as an offence against its provisions is equally punishable under s. 6.

Section 9 deals with abstraction alone, and was specially designed to meet the case of the removal of cream from milk. Its provisions are more stringent than those of s. 6, and certain defences which are available under s. 6, as will be seen presently, are not available under s. 9.

The numerous other offences created by the Acts are dealt with separately at pp. xxxi., xxxii., *post.*

DEFENCES.

Assuming that there has been an actual sale to the prosecutor of the article in question, the defences to a prosecution for what has been termed the first class of offences (under ss. 3 and 4) appear to be (1) that the article was not intended to be sold as an article of food or a drug, as the case may be; (2) that if an article of food, it is not injurious to health, or if a drug, that its quality or potency has not been affected; (3) that the defendant had no knowledge of the adulteration, and could not with reasonable diligence have obtained such knowledge; (4) the defence of a warranty from the wholesale dealer under s. 25 might also be a good defence to a prosecution for "selling," though it would not be to one for "mixing." See note (*b*) to s. 25, *post*, p. 76. But, in practice, it would be unnecessary to plead the warranty as a technical defence under s. 25, because a warranty would be strong evidence of absence of guilty

knowledge, and would tend to establish defence (3), above. The giving at the time of the sale of a descriptive label (s. 8) on or with the article sold, indicating the presence of injurious ingredients, would afford no defence, neither would the giving to the purchaser notice of the adulteration at the time of sale by any other means (*e.g.*, by a verbal communication or by a placard exhibited in a shop) protect the seller. Moreover, a master is liable for the acts of his servants under these two sections, unless he has exercised a reasonable amount of supervision over them.

The defences to the second class of offences are more numerous, but, in the first place, it is important to observe that absence of guilty knowledge is no defence in these cases, and that a seller may be made liable for the unauthorised acts of servants, and even for acts which he has expressly forbidden or for acts of third parties over whom he has no control. The defences to a prosecution under s. 6 (assuming, as before, that there has been an actual sale) are (1) that the article sold was the same in nature, substance, and quality as the article demanded by the purchaser, or, in other words, that the purchaser got what he asked for; (2) that the defendant is protected by any of the exceptions contained in sub-ss. (1)—(4) of s. 6, *post*, pp. 10, 11; (3) that the article was sold with a descriptive label stating that it was mixed with an ingredient not injurious to health (s. 8); (4) that notice was given in some other way to the purchaser at the time of the sale, that the article was mixed, diluted, or of an inferior quality, etc. (see note (*b*) to s. 6, *post*, p. 13); (5) that the defendant bought the article in the same state as sold, and that he bought it with a warranty, and had no reason to believe that it had undergone any change (s. 25). In the case of spirits diluted with water, there is also a special defence

under s. 6 of the Act of 1879, that the spirit has not been reduced more than a certain degree below proof.

It should be noted that it is no defence to prove that the defendant bought the article in the same state as it was in when he sold it, and that he had no reason to believe that it had undergone any change, unless he can also produce a sufficient warranty from the person from whom he bought it; and that, conversely, a warranty by itself is no defence, unless the other requirements of s. 25 are complied with. As to what amounts to a warranty, see note (*c*) to s. 25, *post*, p. 78.

Section 7, as has already been pointed out, has practically fallen into disuse.

In the case of a prosecution under s. 9 for abstracting an ingredient from an article of food so as to affect injuriously its nature, substance, or quality, the defendant must show that he made a "sufficient disclosure" (in the words of the section) of the alteration. The defence of a descriptive label under s. 8 is only available in the case of those sections which precede it, and therefore a descriptive label does not necessarily furnish a defence under this section, though it would of course do so if it amounted to a "sufficient disclosure." In other words, if a descriptive label is relied upon at all, it must satisfy the requirements of s. 9—not of s. 8.

It is no defence to a prosecution under this section for the seller to allege that he had no knowledge of the alteration at the time of the sale. As to how far a written warranty affords a defence, see note (*b*) to s. 25, *post*, p. 76.

OTHER OFFENCES.

The sale of margarine as butter is prohibited by the Margarine Act, and a number of stringent restrictions are placed upon the manufacture, carriage, importation,

and sale of margarine and milk-blended butter by that Act and the Acts of 1899 and 1907.

The Acts also create a number of subsidiary offences, such as refusing to sell to an officer charged with the execution of the Acts (s. 17 of the Act of 1875, and s. 4 of the Act of 1879); obstructing an officer in the execution of his duties (s. 16 of the Act of 1899); giving a false warranty, etc. (s. 27 of the Act of 1875, and s. 20 (6) of the Act of 1899); using a milk cart or can not inscribed with the name of the owner (s. 9 of the Act of 1899). These offences do not come within the scope of this introduction; they are fully dealt with in the notes to the sections creating them.

APPOINTMENT AND DUTIES OF ANALYSTS.

Analysts are appointed by the local authorities, and are bound, on payment of their fee, to analyse any article of food, etc. submitted to them, either by a public officer or by a private individual (s. 12 of the Act of 1875), and to give a certificate in the prescribed form (s. 18). They also have to submit quarterly reports to the Local Government Board (s. 19).

Government Analysts.—The Government laboratory, which is under the control of the Commissioners of Inland Revenue, acts as a court of appeal in doubtful cases. Its aid can only be invoked through the court before whom proceedings under the Acts are taken (s. 22 of the Act of 1875 and s. 21 of the Act of 1899).

TAKING OF SAMPLES, ETC.

Public Officer.—Any of the public officers mentioned in s. 13 of the Act of 1875, and ss. 2 and 3 of the Act of 1899, may purchase in the ordinary way a sample of any article (s. 13 of the Act of 1875), or may procure at the

place of delivery a sample in the course of delivery from the vendor to the purchaser (s. 3 of the Act of 1879, and s. 14 of the Act of 1899), or under s. 10 of the Margarine Act they may take, without purchase, a sample of butter exposed for sale. In the case of imported articles the Commissioners of Customs have power to take samples without purchase (s. 1 of the Act of 1899), and by s. 2 of the Act of 1907 certain public and local authorities may enter butter and margarine factories, etc. and take samples, though in this case it is by no means clear what consequences are to follow if adulteration is detected. See the notes to that section at p. 172, *post*. Any person who refuses to sell to a public officer, or obstructs him in the exercise of these powers, is liable to a penalty.

When the sample has been obtained, the formalities prescribed by s. 14 of the Act of 1875, or s. 1 or s. 2 of the Act of 1899, as the case may be, must be observed, unless the sample is one taken in course of delivery. In that case, the sample need not be divided in accordance with s. 14 of the Act of 1875, but if it is a sample of milk or margarine, a portion of it must be forwarded to the consignor.

Private Individual.—A private purchaser has none of the compulsory powers above mentioned. He can only purchase in the ordinary way, and cannot compel the vendor to sell. But having purchased an article, he need not go through any of the formalities prescribed by s. 14 of the Act of 1875.

ANALYSIS.

The public officer must then send the sample obtained by him to the public analyst, who will issue his certificate (s. 13) in the form prescribed by the Act. The

production of such a certificate is a condition precedent to any further proceedings.

If the article has been purchased by a private purchaser, it is doubtful whether an analysis need be made, or a certificate obtained (*Buckler* v. *Wilson*, [1896] *post*, p. 52). For instance, if at the time of the sale, the seller admitted that the article purchased was adulterated, the private purchaser could probably prosecute him without any further formalities, and obtain a conviction on that admission. As a matter of fact, prosecutions by private individuals are almost unknown, owing to the expense and trouble involved.

PROSECUTIONS.

Prosecutions under the Acts are almost always instituted by one of the public officers mentioned in s. 13 of the Act of 1875, and ss. 1, 2 and 3 of the Act of 1899. But it is well established that private persons can also take proceedings to enforce some if not all of the provisions of the Acts. See *Buckler* v. *Wilson*, [1896] *post*, p. 52, and *Connor* v. *Butler*, [1902] *post*, p. 137.

The person prosecuting must, within twenty-eight days from the time of the purchase (s. 19 of the Act of 1899), lay an information before a magistrate, who may, if he thinks fit, grant a summons, returnable within fourteen days from the day of service. The summons must contain particulars of the offence alleged, and a copy of any analyst's certificate obtained must be served with it.

If the defendant desires to use the certificate of any analyst by way of defence, he must send a copy of it to the prosecutor at least three clear days before the return day of the summons, and if he relies upon the defence of a warranty, he must, within seven days after the service

of the summons, send to the prosecutor a copy of the warranty, with the name and address of the person from whom he received it, and must also give notice to the giver of the warranty (ss. 20 and 22 of the Act of 1899).

The summons is then heard in the ordinary way. The only special features are (1) that the certificate of a public analyst is sufficient evidence, either for the prosecution or the defence, of the facts therein stated, unless the other party requires the analyst to be called (s. 21 of the Act of 1875, and s. 22 of the Act of 1899); (2) that the court may, if it thinks fit, and must if requested send a sample to the Government laboratory for further analysis (s. 22 of the Act of 1875, and s. 21 of the Act of 1899).

A right to appeal to quarter sessions is given by s. 23 of the Act of 1875.

PENALTIES.

The penalties which can be inflicted vary considerably according to the gravity of the offence, and provision is made by ss. 3 and 4 of the Act of 1875, and s. 17 of the Act of 1899, for the infliction of heavier punishment upon persons who have been previously convicted. In some districts the operation of the Acts has been greatly impeded by the excessively light penalties imposed by the local magistrates. See Circular Letters to clerks to justices at pp. 269—271, *post*.

THE ACT OF 1907.

The Butter and Margarine Act, 1907, is mainly designed to prevent the adulteration of butter. It establishes a system of inspection of manufactories of butter, margarine, etc. (s. 2), brings milk-blended butter within the law relating to margarine (ss. 1, 5, 9), limits

the amount of water permissible in butter, margarine and milk-blended butter (s. 4), authorises the Local Government Board to make regulations as to the use of preservatives in those substances (s. 7), and forbids the sale of margarine or milk-blended butter under any name not sanctioned by the Board of Agriculture (ss. 8—10).

The Milk and Dairies Act, 1914.

Sections 5 and 6 and Schedule III. of this Act make a number of alterations in the law as to taking samples of milk and cream, and as to certificates of analysis and subsequent legal proceedings in respect of such samples; but they do not apply to samples of any other articles. The Act does not state which, if any, of the provisions of the Sale of Food and Drugs Acts are superseded by the new legislation, and its effect is, therefore, somewhat doubtful. The other sections, which confer extensive powers upon various public authorities to prevent the sale of adulterated or unwholesome milk, are administered under the Public Health Acts, and are outside the scope of this book.

Regulations and Orders.

A number of Regulations and Orders have been made by the Local Government Board and the Board of Agriculture under powers conferred upon them by the Acts of 1899 and 1907. They provide as follows:—

Wholesale Dealers in Margarine.—An Order of December 22nd, 1887, prescribed the manner in which margarine factories were to be registered. That Order has been rescinded, except as regards existing factories, by an Order of February 26th, 1900, *post*, p. 218, which

provides for the registration of premises of wholesale dealers in margarine, as well as of margarine factories. A similar Order was made as to butter factories, etc., on December 28th, 1907, *post*, p. 221.

Competency of Analysts.—A Regulation of March 7th, 1900, *post*, p. 225, enumerates the qualifications required in persons seeking to be appointed public analysts. This Regulation should be read in conjunction with a Circular Letter from the Local Government Board dated March 8th, 1900, *post*, p. 245, in which portions of the Regulation are explained.

Milk and Butter Standards.—The Sale of Milk Regulations, 1901 and 1912, *post*, pp. 226, 228, and the Sale of Butter Regulations, 1902, *post*, p. 229, prescribe certain standards of quality for milk and butter, and provide that articles falling below the standard are to be deemed not to be genuine until the contrary is proved. It should be noted that the Regulations do not fix an absolute standard, but raise a presumption which can be rebutted by evidence. Milk or butter below the standard is not necessarily adulterated, and milk or butter above the standard is not necessarily genuine. A Circular Letter of the Board of Agriculture, dated December 28th, 1901, *post*, p. 247, contains an explanation of portions of these Regulations.

Public Health (Milk and Cream) Regulations.—These Regulations, which are made under the Public Health Acts, impose restrictions upon the addition of preservatives and thickening substances to milk and cream. They are explained in a series of Circular Letters from the Board of Agriculture and Local Government Board, which will be found at pp. 271—279, *post*.

CIRCULAR LETTERS.

Several Circular Letters from different Government Departments will be found in the Appendix. They contain a quantity of valuable information on various matters connected with the administration of the Acts.

Analysts' Quarterly Reports.—Letters of January 1st, 1879, and December 17th, 1913, *post*, pp. 241, 279, contain directions as to the manner in which, and the date up to which, the quarterly reports are to be made out.

Samples.—Letters dated respectively February 26th, 1894, December 28th, 1901, July 13th, 1903, and May 1910, *post*, pp. 242, 247, 251, 266, contain directions as to the manner in which samples of milk, butter, and certain other articles should be taken, packed and preserved.

Penalties.—Letters dated July 24th, 1902, and March 18th, 1912, *post*, pp. 269, 270, call attention to the inadequate penalties inflicted by some courts of summary jurisdiction.

Decomposition of Milk Samples.—A letter dated August 17th, 1903, *post*, p. 252, states the chemical changes which take place in samples of milk which have been kept a long time before being analysed, and discusses the question of how far an analysis of such decomposed milk is reliable.

Adulteration and Analyses of Milk.—A letter dated March 16th, 1905, *post*, p. 257, suggests that local authorities before commencing proceedings against sellers of adulterated milk should give them an opportunity of explanation, and also that farmers and cow-

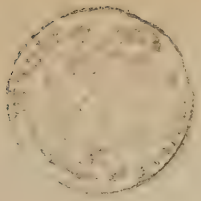
keepers should from time to time test the milk of their herds by analysis.

Preservatives in Milk.—A letter dated July 11th, 1906, *post*, p. 259, calls attention to the danger to public health caused by the use of preservatives in milk, and makes suggestions for checking such use in the future.

Manufacture of Milk Churns.—A letter dated February 27th, 1907, *post*, p. 263, suggests that churns should be so constructed as to prevent pilfering from or tampering with the contents in transit.

Adulteration of Cream.—A letter dated October 1st, 1909, *post*, p. 264, calls attention to certain novel adulterants used with cream, and indicates methods for detecting them upon analysis.

Besides the letters referred to above, letters dated respectively February 27th, 1900, and March 8th, 1900, *post*, p. 245, state the general effect of the Order as to the registration of margarine factories, etc., and of the regulation as to the competency of public analysts.



THE

SALE OF FOOD AND DRUGS ACTS, 1875—1907.

THE SALE OF FOOD AND DRUGS ACT, 1875.

(38 & 39 VICT. c. 63.)

An Act [*to repeal the Adulteration of Food Acts, and*] *to make better provision for the Sale of Food and Drugs in a pure state.* [11th August, 1875.]

[*Whereas it is desirable that the Acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended :*

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :]

Repeal.—The words enclosed in square brackets are repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

1. *Repeal of Statutes.*—[*From the commencement of this Act the statutes of the twenty-third and twenty-fourth of Victoria, chapter eighty-four, of the thirty-first and thirty-second of Victoria, chapter one hundred and twenty-one, section twenty-four, of the thirty-third and*

thirty-fourth of Victoria, chapter twenty-six, section three, and of the thirty-fifth and thirty-sixth of Victoria, chapter seventy-four, shall be repealed except in regard to any appointment made under them and not then determined, and in regard to any offence committed against them or any prosecution or other act commenced and not concluded or completed, and any payment of money then due in respect of any provision thereof.]

The enactments repealed by this section are the Adulteration of Food and Drink Act, 1860; s. 24 of the Sale of Poisons and Pharmacy Act, 1868; s. 3 of the Sale of Poisons (Ireland) Act, 1870; and the Adulteration of Food and Drugs Act, 1872. These enactments remain repealed notwithstanding the fact that s. 1 is itself repealed by the first Statute Law Revision Act of 1883.

Other Acts relating to Adulteration.—The following enactments, contained in the Revenue Acts, relate to the adulteration of certain specific articles of food, and are enforced by the Commissioners of Inland Revenue.

[1718] 5 Geo. 1, c. 11, s. 23, relating to coffee;

[1724] 11 Geo. 1, c. 30, ss. 5, 9, 39, relating to tea and coffee;

[1730] 4 Geo. 2, c. 14, s. 11, relating to tea;

[1733] 7 Geo. 2, c. 19, s. 2, relating to hops;

[1776] 17 Geo. 3, c. 29, ss. 1—6, 9, relating to tea;

[1882] 45 & 46 Vict. c. 41, ss. 5 and 6, relating to substitutes for coffee and mixtures of coffee and other articles;

[1885] 48 & 49 Vict. c. 51, s. 8, relating to beer.

See also s. 30 of this Act (*post*, p. 94), under which the Commissioners of Customs are invested with certain powers over the importation of tea, and s. 1 of the Act of 1899, and s. 5 of the Act of 1907, relating to the importation of margarine, adulterated or impoverished milk or butter, separated milk, and any other article to which the section may be made to apply by Order in Council (*post*, pp. 130, 174).

The Bread Acts of 1822 and 1836 (3 Geo. 4, c. 106, and 6 & 7 Will. 4, c. 37) relate respectively to the sale and adul-

teration of bread in the city of London and within ten miles of the Royal Exchange, and to the sale and adulteration of bread beyond ten miles of the Royal Exchange.

The adulteration of tobacco does not fall within the scope of the Sale of Food and Drugs Acts, but is provided for by the Excise laws, and by the Oil in Tobacco Act, 1900 (63 & 64 Vict. c. 35).

The Public Health Acts contain a number of provisions dealing with the sale, importation, etc., of unwholesome food See, for example, the Public Health Act, 1875, ss. 116—119, and the Public Health (Regulations as to Food) Act, 1907. And ss. 1—4 and 8 of the Milk and Dairies Act, 1914, *post*, pp. 183, 195, are designed to prevent the sale or importation of unwholesome milk and cream.

2. *Interpretation of Words.*—[*The term "food" shall include every article used for food or drink by man, other than drugs or water :*] (*a*)

The term "drug" (*b*) shall include medicine for internal or external use :

The term "county" shall include every county, riding, and division, as well as every county of a city or town not being a borough (*c*) :

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England, and any divisional justices in Ireland.

(*a*) **"Food."**—This definition of the term "food" has been repealed by the Act of 1899, s. 27, and Schedule, and replaced by s. 26 of that Act, *post*, p. 165.

(*b*) **"Drug."**—Difficulty may arise under this definition with regard to those substances which have a commercial as well as a medicinal use, *e.g.*, sulphur, borax, carbolic acid, sulphuric acid. In *Fowle* v. *Fowle* (1896), 60 J. P. 758 ; 75 L. T. 514 ; 18 Cox C. C. 462, a grocer had sold a quarter of a pound of beeswax which proved to be adulterated with fifty per cent. of paraffin. It was proved that beeswax is used in

the preparation of medicines, and is included in the British Pharmacopœia. The justices dismissed the summons on the ground that beeswax was not a drug. The court (GRANTHAM and WRIGHT, JJ.) held that it is a question of fact for the justices to decide whether, under all the circumstances of each case, the article is a drug, and that under the circumstances of this case they were right in holding that the beeswax was not a drug; but GRANTHAM, J., seemed to imply that if the sale had been by a chemist, the result might have been different. From the above case, it is suggested that the test is whether the article was sold for medicinal use or not. In *Houghton* v. *Taplin* (1897), 13 T. L. R. 386, HAWKINS, J., was of opinion that arsenical soap containing no arsenic was not a drug. There are some articles of quasi-confectionery, such as linseed and liquorice lozenges, which are on the border line between drugs and articles of food when sold by a druggist, and it is difficult to say that distilled water, about which some controversy has arisen, is either a food or a drug (see s. 26 of the Act of 1899, *post*, p. 165), although it may be a vehicle for the administration of drugs.

(*c*) **Cinque Port.**—Provision for the liberty of a Cinque port is made by s. 32, *post*, p. 95; also by s. 7 of the Act of 1879, *post*, p. 115.

DESCRIPTION OF OFFENCES.

3. *Mixing Injurious Ingredients with Food.*—No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health (*a*), with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanor,

for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.

This section, which relates to the adulteration of articles of food with substances injurious to health, is much more stringent than the sixth and subsequent sections, which primarily relate to cases where harmless substances only have been used. But it should be noted that a person may be convicted of an offence under s. 6, even though the facts would have warranted a prosecution under this section. This was held by Lord ALVERSTONE, C.J., and LAWRANCE and PHILLIMORE, JJ., in *Goulder* v. *Rook* and *Bent* v. *Ormerod*, [1901] 2 K. B. 290; 65 J. P. 646; 70 L. J. K. B. 747; 84 L. T. 719; 49 W. R. 684, where two beer-sellers had sold beer containing arsenic which had been added to the beer without their knowledge or consent.

Prosecutions are now seldom instituted under this section. This may be owing partly to the fact that adulteration with injurious materials is not very prevalent, partly to the heavy expense which is usually incurred in obtaining a conviction, arising from the necessity of employing scientific and professional witnesses to prove that the articles are injurious to health, and partly because it is easier to secure a conviction under s. 6, under which no question of *mens rea* arises. Considerable diversity of opinion exists among medical and scientific men as to whether certain articles are injurious to health or not. In *Summers* v. *Grist* (1896), 60 J. P. 346, the justices at South London Sessions held that it was an offence under this section to sell a 1-lb. bottle of peas knowing it to contain three grains of sulphate of copper. In *Friend* v. *Mapp* (1904), 68 J. P. 589; 2 L. G. R. 1317, the justices found that 2·55 grains of sulphate of copper in a pound of peas was not injurious to health, and the High Court, though they did not seem to agree with the decision, refused to disturb it.

As to the use of injurious colouring matters and preservatives, see the Appendix, *post*, pp. 235, 259, 302.

By s. 7 of the Act of 1907, *post*, p. 177, the Local Government Board are empowered to make regulations as to the use of preservatives in butter, etc.; and, by s. 2 (*d*) of the Milk

and Dairies Act, 1914, *post*, p. 185, as to the use of colouring matter in milk and cream.

Mens Rea.—Guilty knowledge is a necessary ingredient of offences under this section, see s. 5, *post*, p. 8, and *Taylor* v. *Nixon*, [1910] 2 I. R. 94, and compare the cases mentioned in note (*b*) to s. 9 of this Act, *post*, p. 38.

(*a*) **Article Injurious to Health.**—The material question is, not merely whether the added ingredient is injurious to health, but whether the article when mixed with the ingredient is injurious (*Hull* v. *Horsnell* (1904), 68 J. P. 591; 92 L. T. 81; 21 T. L. R. 32; 20 Cox C. C. 759; 2 L. G. R. 1280).

It is not necessary that the article should be injurious to the health of every individual. Thus in *Cullen* v. *McNair* (1908), 72 J. P. 376; 99 L. T. 358; 24 T. L. R. 692; 6 L. G. R. 753, where cream, an article likely to be consumed by infants and invalids, was mixed with boric acid in a proportion harmless to healthy adults but injurious to infants and invalids, it was held that the appellant had been rightly convicted.

Liability of Limited Company.—A limited company can be prosecuted under this section (*Pearks, Gunston and Tee, Limited* v. *Ward*, and *Hennen* v. *Southern Counties Dairies Co., Limited*, [1902] 2 K. B. 1; 66 J. P. 774; 71 L. J. K. B. 656; 87 L. T. 51, *per* CHANNELL, J.). In the above case Lord ALVERSTONE, C.J., was doubtful on the point, but in *Chuter* v. *Freeth and Pocock, Limited*, [1911] 2 K. B. 832; 75 J. P. 430; 80 L. J. K. B. 1322; 105 L. T. 238; 27 T. L. R. 467; 9 L. G. R. 1055, he treated the judgment of CHANNELL, J., as being law. This case was followed in *R.* v. *Ascanio Puck, Limited* (1912), 76 J. P. 487; 29 T. L. R. 11; 11 L. G. R. 136.

Liability of Master.—A person under this and the subsequent section is liable for the acts of his or her servants in the ordinary course of business, subject to the provisions of s. 5, *post*. The word "permit," in this and the 4th section, extends to neglect of reasonable supervision. See also note (*b*) to s. 6, *post*, p. 11.

Common Law Misdemeanor.—To mix or knowingly permit servants to mix unwholesome ingredients with any article of food which is intended for sale is a misdemeanor at common law. In *Rex* v. *Dixon* (1814), 3 M. & S. 11; 4 Camp. 12; 15 R. R. 381, a baker was convicted for supplying children at an asylum with bread, into which his servants, to his knowledge, had introduced alum. See also *R.* v. *Stevenson* (1862), 3 F. & F. 106, and *Burnby* v. *Bollet* (1847), 16 M. & W. 644; 17 L. J. Ex. 190; 11 Jur. (o.s.) 827. And a person who knowingly sells food or drugs under a false description may be guilty of obtaining money by false pretences (*R.* v. *Foster* 1877), 2 Q. B. D. 301; 41 J. P. 295).

Warranty presumably no Defence.—In *Elliott* v. *Pilcher*, [1901] 2 K. B. 817; 65 J. P. 743; 70 L. J. K. B. 795; 85 L. T. 50; 20 Cox C. C. 18, BIGHAM, J., expressed an opinion that a warranty under s. 25 of this Act would be no defence to a prosecution under this or the following section. The point, however, is of but little importance since by s. 5, *infra*, the accused is entitled to an acquittal if he proves that he had no guilty knowledge. See also note (*b*) to s. 25, *post*, p. 76.

Label or Disclosure presumably no Defence.—The label defence under s. 8 does not apply to this section. And it is submitted that the seller is not protected by disclosing the injurious ingredient at the time of sale, for the decisions to that effect under s. 6 depend upon the words "to the prejudice of the purchaser" and "the article demanded," which are not found here. See the notes to that section. The judgments of Lord ALVERSTONE, C.J., and PICKFORD, J., in *Williams* v. *Friend*, [1912] 2 K. B. 471; 76 J. P. 301; 81 L. J. K. B. 756; 107 L. T. 93; 23 Cox C. C. 86; 28 T. L. R. 407; 10 L. G. R. 494, seem to support this proposition; and though there are some dicta to the contrary in *Cullen* v. *McNair*, *ante*, p. 6, they were not necessary to the decision, and it does not appear that the attention of the court was directed to the difference in the wording of the two sections.

4. *Mixing Drugs with Injurious Ingredients.*—No person shall, except for the purpose of compounding as hereinafter described (*a*), mix, colour, stain, or

powder, or order or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, coloured, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence.

The notes to s. 3, *supra*, are also applicable to this section, with this difference, that it is not necessary to prove direct injury to health. It is sufficient to prove that the quality or potency of the drug is deficient.

(*a*) **Compounding as hereinafter described.**—These words are meaningless. See note (*l*) to s. 6, *post*, p. 31.

5. *Proof of Absence of Knowledge.*—Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained, or powdered as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

Guilty Knowledge.—This section renders it unnecessary to prove any *mens rea* in cases of prosecutions under the two foregoing sections, for it throws upon the defendant the onus of proving that there was no *mens rea*. Moreover it is not sufficient to entitle the defendant to exemption under this section for him to prove that he had no knowledge of the adulteration. He must also prove that he could not have obtained that knowledge with reasonable diligence.

Liability of Master.—This section will not serve as a defence for a person who, neglecting to exercise a reasonable supervision over his or her servants, affords them an opportunity of adulterating an article of food in violation of ss. 3, 4, but it is, of course, competent for a person charged under ss. 3, 4, to prove that he or his servants had been purposely deceived.

6. *Sale of Articles of Food and of Drugs not of the Proper Nature, Substance, and Quality.*—No person (*a*) shall sell (*b*) to the prejudice of the purchaser (*c*) any article of food or any drug which is not of the nature, substance, and quality (*d*) of the article demanded (*e*) by such purchaser(*f*) under a penalty (*g*) not exceeding twenty pounds: Provided that an offence shall not be deemed to be committed under this section in the following cases (*h*); that is to say,

(1) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof (*i*);

(2) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent (*k*);

(3) Where the food or drug is compounded as in this Act mentioned (*l*);

(4) Where the food or drug is unavoidably (*m*) mixed with some extraneous matter in the process of collection or preparation.

This is a most important section, and the majority of prosecutions under the Sale of Food and Drugs Acts are instituted under it. It may be observed that a person may be prosecuted under this section even though the facts proved would have supported a conviction under other sections of the Act, *e.g.*, ss. 3 and 4 (*Goulder* v. *Rook*, *ante*, p. 5), and s. 7 (*Beardsley* v. *Walton*, *infra*, p. 32).

Formalities to be Observed.—In taking out a summons under this section, the provisions of s. 19 (2) of the Act of 1899, which replaces s. 10 of the Act of 1879, should be strictly observed (see p. 151, *post*).

(*a*) **Liability of Limited Company.**—A limited company can be prosecuted under this section. See *Booth* v. *Helliwell* (1914), 78 J. P. 223; 30 T. L. R. 529, where a grocer formed himself into a limited company of which he was director, manager, secretary, and practically the only shareholder; adulterated butter having been sold in the shop, the court held that both the company and the assistant who actually sold could be prosecuted, but not the grocer himself. See also *Pearks, Gunston and Tee, Limited* v. *Ward* and *Chuter* v. *Freeth and Pocock, Limited*, *ante*, p. 6. If the business of the company is being carried on by a receiver, it is presumed that he is the person to be prosecuted, but the point has not yet been judicially decided.

(*b*) **Guilty Knowledge.**—There is no doubt that there is no necessity to prove *mens rea* in this section of the Act. This being a penal statute, such a construction is contrary to the maxim, "*actus non facit reum nisi mens sit rea*," but such words as "knowingly" or "with knowledge" appear only in s. 5; and in *Betts* v. *Armstead* (1888), 20 Q. B. D. 771; 52 J. P. 471; 57 L. J. M. C. 100; 58 L. T. 811; 36 W. R. 720; 16 Cox C. C. 418, CAVE, J., said: "It was suggested that the justices ought to read into the section (s. 6) the word 'knowingly.' . . . That word is not to be found in the section, and it is clear from the words of other sections of the Act that the word 'knowingly' was intentionally omitted from s. 6." See also the cases in note (*b*) to s. 9, *post*, p. 38. As to when *mens rea* is necessary to constitute offences under other sections of the Sale of Food and Drugs Acts, see the judgment of GIBSON, J., in *Taylor* v. *Nixon*, [1910] 2 I. R. 94.

Liability of Master.—The general rule of law is that a master is not criminally responsible for the acts of his servant, if they are done without his knowledge or authority, expressed or implied (*Harrison* v. *Leaper* (1862), 26 J. P. 69; 5 L. T. 640; *Core* v. *James* (1871), L. R. 7 Q. B. 135; 41 L. J. M. C. 19; 25 L. T. 593; 20 W. R. 201); but that he is responsible when there is reasonable evidence of an expressed or implied, actual or constructive, authority on his part for the commission of an act (see *Searle* v. *Reynolds* (1866), 7 B. & S. 704; 35 L. J. Q. B. 18; 14 L. T. 518; and *Wilson* v. *Stewart* (1863), 3 B. & S. 913; 32 L. J. M. C. 198; 8 L. T. 277; 11 W. R. 640; 9 Jur. (N.S.) 1130). If a man's wife manages his business in his absence, and sells an adulterated article, the husband in this case becomes criminally responsible in respect of the sale as if it had been executed by his servant or agent. If this were otherwise, tradesmen or other persons could always evade the law.

Under this section a master is responsible for the *unauthorised* acts of his servant, or even of a stranger. In *Brown* v. *Foot* (1892), 56 J. P. 581; 61 L. J. M. C. 110; 66 L. T. 649; 17 Cox, C. C. 509, the appellant was a retail milk seller, and it was his practice, on receiving the cans of milk from the country, to take a sample from each can before it was sent out for sale. He also published a warning to his servants who sold the milk from the various cans, that any servant whose can of milk did not correspond with the sample taken from it would be liable to dismissal. One of his servants admitted that he had watered his can previously to selling some of its contents to an inspector, and it was held by HAWKINS and WILLS, JJ., that the appellant (the master) had been rightly convicted under this section for selling adulterated milk when, as has been seen, he had not only expressly forbidden his servants to adulterate, but had also taken special precautions to prevent them from doing so. In the course of his judgment WILLS, J., said: "The servant was admittedly employed in the general business of the appellant in selling milk by retail. . . . Therefore the appellant must see that the servant within the scope of his authority does not contravene the Act."

The above case was followed and approved in *Parker* v.

Alder, [1899] 1 Q. B. 20; 62 J. P. 772; 68 L. J. Q. B. 7; 79 L. T. 381; 19 Cox C. C. 191, in which a dairy farmer at Wantage contracted to supply pure milk to be delivered to the purchaser at Paddington station. In accordance with the contract he delivered a churn of pure and unadulterated milk to the Great Western Railway at the local station for conveyance to Paddington. On its arrival at Paddington the milk was found to contain nine per cent. of added water. The magistrate found as a fact that the water had been added unlawfully during the railway journey by someone without the knowledge or authority of, and without any default or negligence on the part of, the seller or any servant of his:—*Held*, by Lord RUSSELL OF KILLOWEN, C.J., and WILLS, J., that the seller was liable to conviction for an offence under s. 6 of this Act, and Lord RUSSELL, in the course of his judgment, said: "Assuming that the respondent [the seller] was entirely innocent morally, and had no means of protecting himself from the adulteration of this milk in the course of transit, has he committed an offence against these Acts? I think he has. . . . It has been decided in *Brown* v. *Foot*, *supra*, in the clearest manner that an innocent vendor of milk is undoubtedly liable for the unauthorised act of his servant in adulterating it . . . and there is really no material difference between that case and this, because a vendor is no more able to prevent the adulteration by a dishonest servant than he is to prevent adulteration by strangers, such as the servants of the railway company. This is one of the class of cases in which the legislature has, in effect, determined that *mens rea* is not necessary to constitute the offence."

Houghton v. *Mundy* (1910), 74 J. P. 377; 103 L. T. 60.; 8 L. G. R. 838, is another case of a master being held liable for an act of his servant committed against express orders.

Kearley v. *Tonge* or *Tyler* (1891), 56 J. P. 72; 60 L. J. M. C. 150; 65 L. T. 261; 17 Cox C. C. 328, in which a different view was taken seems to be overruled by the last three cases. See also *Farley* v. *Higginbotham* in note (*g*) to s. 17 of this Act, *post*, p. 64.

It has been held in Scotland that if the servant is acting altogether outside the scope of his authority the master is not liable; see *Lindsay* v. *Dempster*, [1912] S. C. (J.) 110;

49 Sc. L. R. 999, where the servant was told to deliver milk to customers who had previously ordered it, but sold part of it to an inspector on the way. It is not certain that this decision would be followed in England.

Liability of Servant.—A servant can also be convicted under this section as the actual seller (*Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181; 57 J. P. 775; 60 L. J. M. C. 146; 65 L. T. 149; 39 W. R. 607). In that case the servant of a dairy company was convicted of selling milk adulterated with water, and Lord COLERIDGE, C.J., said: "In my opinion, a person who takes the article in his hand and performs the physical act of transferring the adulterated thing to the purchaser, is a person who sells within this section." It should be noted that this decision does not prevent the master from being convicted as well as the servant. *Hotchin* v. *Hindmarsh* was referred to with approval in *Brown* v. *Foot*, *supra*. See also *Booth* v. *Helliwell*, *ante*, p. 10.

Aiding and Abetting.—It must not be forgotten that any person who knowingly helps another to commit an offence is guilty of "aiding and abetting" the principal offender (Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 5).

(*c*) **"To the Prejudice of the Purchaser."**—The cases collected in the following note illustrate two main propositions: (1) That a purchaser cannot be prejudiced when notice is given to him at the time of the sale that the article sold is not of the nature, substance, and quality of the article he demands; and that (2) in order to show that an article was sold to the prejudice of the purchaser it is not necessary to prove that he has sustained actual prejudice or damage.

With regard to the first point, it is now well settled that where the seller of an article brings to the purchaser's knowledge the fact that the article sold is not of the nature, substance, or quality of the article he demands, the sale is not to the prejudice of the purchaser within the meaning of this section. This was decided in *Sandys* v. *Small* (1878), 3 Q. B. D. 449; 42 J. P. 550; 47 L. J. M. C. 115; 39 L. T. 118; 26 W. R. 814, where COCKBURN, L.C.J., in giving judgment, said: "The provisions of the 6th section seem to me to apply to cases where a seller professes to sell to the

purchaser an article as being of a certain denomination, whereas the article has been altered by an admixture of some other ingredient, and it seems that when the article is so altered this must be considered to have been done to the prejudice of the purchaser, unless it is duly and sufficiently brought to his knowledge; but if the alteration of the article . . . is brought to the knowledge of the purchaser, and he chooses to purchase it notwithstanding, it can never have been intended that such a transaction should be interfered with." See also *Williams* v. *Friend*, [1912] 2 K. B. 471; 76 J. P. 301; 81 L. J. K. B. 756; 107 L. T. 93; 28 T. L. R. 407; 10 L. G. R. 494. But it is not necessary to disclose what the mixture actually is (*ibid. per* PICKFORD, J.).

In *Higgins* v. *Hall* (1886), 51 J. P. 293, the appellant's wife, who was serving in his shop, when asked by a purchaser for a pound of coffee, said, "We don't keep it," but added, pointing to some tins labelled "coffee and chicory," that she sold that as a mixture. She then sold some of the mixture, which was found to contain only about 30 per cent. of coffee:—*Held*, that the justices were wrong in convicting the appellant of selling coffee, for his wife had sold only a mixture, as she was entitled to do if she represented that it was a mixture. Moreover, the purchaser had asked for a mixture and had got it. See also *Sandys* v. *Jackson*, *post*, p. 111.

In *Gage* v. *Elsey* (1883), 10 Q. B. D. 518; 47 J. P. 391; 52 L. J. M. C. 44; 48 L. T. 226; 31 W. R. 501, an inspector bought from the appellant three pints of gin, which proved to be more than thirty-five degrees under proof, but at the time of the sale the appellant called his attention to the following printed notice which was hanging up in the room: "All spirits sold in this establishment are of the same quality as heretofore, but to meet the requirements of the Food and Drugs Adulteration Act they are now sold as diluted spirits; no alcoholic strength guaranteed":—*Held*, by MANISTY and MATHEW, JJ., that there was no sale to the prejudice of the purchaser. *Palmer* v. *Tyler* (1897), 61 J. P. 389, was a case in which an exactly similar notice was used.

In *Dawes* v. *Wilkinson*, [1907] 1 K. B. 278; 71 J. P. 23; 76 L. J. K. B. 182; 96 L. T. 26; 23 T. L. R. 34; 21 Cox

C. C. 340 ; 5 L. G. R. 1, the facts were similar, but the notice was : "All spirits sold in this establishment are of the same quality and strength as heretofore, but, in order to comply with the Food and Drugs Act, will not be of any guaranteed strength." Lord Alverstone, C.J., and Ridley, J. (*dissentiente* Darling, J.) distinguished *Gage* v. *Elsey*, *Sandys* v. *Small*, and *Palmer* v. *Tyler*, and held that the notice was insufficient, because it did not bring to the mind of the purchaser the fact that the spirit was diluted.

In *Morris* v. *Johnson* (1890), 54 J. P. 612, the facts were as follows : Two servants of an inspector went into a public-house and entered a public room called the club room, passing by the bar and kitchen on their way. They then called for half-a-pint of whisky and were served with it in the club room. Upon analysis the whisky proved to be 37½ degrees under proof, and the usual proceedings under this Act were instituted. There was evidence that at the time of the sale there was a notice posted in the bar and the kitchen to this effect : "All spirits sold at this establishment are diluted with water according to price," but there was no such notice in the club room. It was further proved that the bar and the kitchen were visible to anyone approaching the club room from the entrance, and there was but one entrance to the house ; that neither of the two men saw or knew of any notice posted in any part of the house, and that nothing was said at the time of the sale as to the quality of the whisky. But there was nothing to show that the two men did not in fact know that the spirits sold at this house were diluted. Upon these facts the justices refused to convict, but stated a case for the opinion of the High Court. It was there held by Fry, L.J., and Mathew, J., that the justices, before they came to their decision, ought to have inquired whether the men knew that the practice at the respondent's house was to sell only diluted spirits ; in which case no conviction was proper. "The purchasers' complaint," said Mathew, J., "is that they did not see the notice ; but then there was no finding in the case whether they did not know well enough of the diluting of all spirits before sold at the respondent's house. If the justices find that the men did not know that spirits were sold diluted, then there should have been a conviction. But if they did know, then there

should be no conviction." See also the judgment of Lord ALVERSTONE, C.J., in *Bundy* v. *Lewis* (1908), 72 J. P. 489 99 L. T. 833 ; 21 Cox C. C. 744 ; 7 L. G. R. 55.

Morris v. *Askew* (1893), 57 J. P. 724, appears to have been a similar case, but it has not been fully reported.

Morris v. *Johnson* and *Morris* v. *Askew* seem to be inconsistent with the later decision in *Pearks, Gunston and Tee, Limited* v. *Ward*, [1902] 2 K. B. 1 ; 66 J. P. 774 ; 71 L. J. K. B. 656 ; 87 L. T. 51, in which the King's Bench Division held that a sale may be to the prejudice of the purchaser within s. 6 although the purchaser had special knowledge, not derived from information given by the seller, that the article was not of the nature, substance, and quality demanded by him ; and that the test is whether the sale would have been to the prejudice of a purchaser who had not that special knowledge. Lord ALVERSTONE, C.J., said : "The question, in my opinion, is not what is the actual knowledge of the particular purchaser, except in so far as that knowledge is derived from information given by the seller either by notice, by the nature of the article itself, or by what passed at the time of the purchase ; the question is what would be the position, not of a skilled purchaser like an inspector, but of an ordinary person purchasing the article without any special knowledge." DARLING, J., said : "There is a sale to the prejudice of the purchaser, if a purchaser in the abstract would be prejudiced, although the actual purchaser may, for some reason peculiar to himself, not be prejudiced." And CHANNELL, J., expressed the same opinion. As to this point see also s. 2 of the Act of 1879, *post*, p. 106, and *Morton* v. *Green* (1881), 8 Rettie (J.C.) 36 ; 4 Coup. 437.

In *Pearks, Gunston and Tee, Limited* v. *Houghton*, [1902] 1 K. B. 889 ; 66 J. P. 422 ; 71 L. J. K. B. 385 ; 86 L. T. 325 ; 50 W. R. 605, butter was sold blended with milk in such a way as to contain 7·8 per cent. of water above the permissible maximum of 16 per cent. There was a notice in a conspicuous position in the shop to the following effect : "Notice. Pearks' butter as sold at this establishment is choicest butter blended with English full cream milk by new and improved machinery, whereby it retains about 20 to 24 per cent. of moisture, and acquires that delicacy of flavour

which has made Pearks' butter so famous." The inspector had asked for half a pound of shilling butter, and did not in fact actually see the notice. The King's Bench Division held that, assuming that only one kind of butter was sold in the shop, the seller was protected by the notice and the sale was not to the prejudice of the purchaser. The sale of butter of this description is now regulated by ss. 4 (2) and 9 of the Act of 1907, *post*, pp. 174, 178. A further point was raised in the case, which is dealt with in the notes to s. 8, *infra*.

In *Hayes* v. *Rule and Law* (1902), 87 L. T. 133; 18 T. L. R. 535, the facts were the same as in the last case, except that the inspector had asked for "best fresh butter," and had not actually seen the notice, though he admitted that he could have done so if he had liked. The King's Bench Division considered that the fact that best fresh butter was asked for was sufficient to distinguish the case from *Pearks* v. *Houghton*, and expressed an opinion that under the circumstances the sale would be to the prejudice of the purchaser, unless it could be proved that he actually saw the notice. The actual decision, however, was in favour of the defendants upon another point. See, p. 34, *post*.

Of course the notice must be clear and unequivocal. In *Collett* v. *Walker* (1895), 59 J. P. 600; 64 L. J. M. C. 267, a purchaser, on entering a shop and asking for some cheese, was supplied with a mixture which was composed of skimmed milk and beef fat, the bulk of the butter fat which is contained in cheese made from "whole" milk having been abstracted. Attached to the bulk of the substance from which the purchaser's portion was taken was a label containing the words "Valleyfield finest Oleine cheese," the words "finest Oleine" being in smaller type than the others. No notice of admixture by a label on or with the article was given to the purchaser, so as to give the seller a defence under s. 8, *post*. The purchaser did not notice the word "oleine" on the label, and said that if he had he would not have known what it meant:—*Held*, by Grantham and Lawrance, JJ., that the appellant was rightly convicted of an offence under s. 6. See also *Dawes* v. *Wilkinson*, *ante*, p. 14. And in *Star Tea Co.* v. *Neale* (1909), 73 J. P. 511; 8 L. G. R. 5, an inspector asked for coffee and was given a

mixture containing 74 per cent. of chicory in a wrapper labelled "Coffee Mixture," with the words "Sold as a mixture of coffee and chicory" in very small print. It was held that the defendant had been rightly convicted, and that the words "Coffee Mixture" would not necessarily lead a purchaser to suspect adulteration.

The same principle is illustrated in two recent Scotch cases. In *Souter* v. *Lean* (1903), 6 Fraser (J. C.) 20; 4 Adam, 280 41 Sc. L. R. 192, a purchaser asked for "sweet milk," and was given a mixture of sweet milk and skim milk with 2·63 per cent. of fat, contained in a can embossed with the words "not guaranteed 3 per cent." The Court of Justiciary (*dissentiente* Lord MONCREIFF) held that he had not got what he asked for, and that the vendor was not protected by the words on the can. And in *Wilson* v. *McPhee* (1903), 68 J. P. 175; 6 Fraser (J. C.) 10; 4 Adam, 310; 41 Sc. L. R. 195, a purchaser who asked for a bottle of brandy was given one labelled "Old Brandy, Tricoche & Co., Cognac," and containing 65 per cent. of spirit other than brandy. The Court of Justiciary (*dissentiente* the LORD JUSTICE CLERK) held that the vendor was not protected.

A false representation as to the nature, substance, and quality of the article demanded made by the seller prior to the sale, does not constitute an offence under s. 6, provided that the true nature, etc., is disclosed at the time of sale. In *Kirk* v. *Coates* (1885), 16 Q. B. D. 49; 50 J. P. 148; 55 L. J. M. C. 182; 54 L. T. 178; 34 W. R. 295, the question was whether a milkman was guilty of an offence under this section who stated to an officer that some cans contained new milk, but afterwards, on the officer intimating that he would have some, declared that it was old milk and not new. The magistrates decided that this was not a sale of new but of old milk, and that the defendant was therefore not liable under s. 6. The court upheld the decision of the magistrates. *Frew* v. *Gunning* (1901), 3 Fraser (J. C.) 51; 3 Adam, 339; 38 Sc. L. R. 555, was a similar case. There, a milk seller on his rounds ran short of milk, and bought a further supply from a dairyman. An inspector asked him for some "sweet milk." He was going to supply him from what was left of his own milk, but the inspector insisted upon being supplied from the can containing the purchased milk. He told the

inspector before purchase that it was not his own milk, and warned him that it might or might not prove to be sweet milk. The milk turned out to be adulterated. The sheriff substitute acquitted and the Court of Justiciary held that the acquittal was right. See also *Sandys* v. *Jackson*, *post*, p. 111.

If a false representation is in fact made at the time of the sale, an offence is committed, even though the purchaser must have known from the price paid that the representation was false. In *Heywood* v. *Whitehead* (1898), 76 L. T. 781, a milkman sold a pint of milk for a penny as new milk, though it was in fact skim milk. One of the magistrates thought that the inspector must have known from the price that the milk was not new milk, and that, therefore, no offence had been committed; but the court held that the milkman ought to have been convicted. And in *Keenan* v. *Costelloe* (1910), 44 Ir. L. T. 218, where a farmer had a contract with a creamery to supply milk for the purpose of butter making and the price was to vary according to the amount of butter fat, it was held an offence to supply under the contract milk containing added water. See also *Fecitt* v. *Walsh*, *post*, p. 41.

In *Bundy* v. *Lewis* (1908), 72 J. P. 489; 99 L. T. 833; 7 L. G. R. 55, an inspector asked for "paregoric," and was given a bottle labelled "Paregoric substitute," but wrapped in an opaque wrapper. The substance contained no opium, an essential ingredient according to the British Pharmacopœia. The assistant who served him, being unqualified, was not permitted by the Pharmacy Acts to sell opium, and the next day the employer wrote and apologised for the "technical error" of not informing the inspector at the time. The justices found that there was no prejudice to the purchaser, and the High Court held that there was evidence to support their finding. The judgment merely states that upon the special facts of the case there was no prejudice to the purchaser, but does not indicate upon what facts the court relied. It is submitted that the case, as reported, is valueless as an authority.

With regard to the second point, *i.e.*, that in order to show that an article was sold to the prejudice of the purchaser it is not necessary to prove that the purchaser has

suffered actual prejudice or damage, there was at one time a conflict of opinion.

In *Davidson* v. *M'Leod* (1877), 42 J. P. 43 ; 5 Rettie (J. C.) 1 ; 3 Coup. 511, the majority of the High Court of Justiciary in Scotland held that a purchaser for analysis under s. 13 of the Act, buying samples for analysis, and not for consumption or at his own expense, could not be prejudiced by the purchase ; but in *Hoyle* v. *Hitchman* (1879), 4 Q. B. D. 233 ; 43 J. P. 431 ; 48 L. J. M. C. 97 ; 40 L. T. 252 ; 27 W. R. 487, the Queen's Bench Division took the opposite view ; and as the practical effect of the decision in *Davidson* v. *M'Leod* was to render s. 6 inoperative in Scotland, it was enacted by s. 2 of the Act of 1879, that it should be no defence to allege that the purchaser having bought only for analysis was not prejudiced. See *post*, p. 106.

As regards purchases for analysis, therefore, the point is now settled by s. 2 of the Act of 1879. But the judgments in *Hoyle* v. *Hitchman* cover the case of a private as well as an official purchaser ; for MELLOR, J., said : "If a purchaser, whoever he may be, . . . gets an article inferior to that which he demands and pays for, it seems to me that he is necessarily prejudiced within the meaning of the section. . . . The real offence is the fraudulent sale of an article adulterated so as to be of an inferior nature, etc., to that which is demanded and paid for. The necessity for the words 'to the prejudice of the purchaser,' is this : but for these words, various absurdities might arise. . . . The sale of an article of a superior nature or quality to that demanded would be an offence." And LUSH, J., said : "What is the meaning of 'prejudice'? It cannot be confined to pecuniary prejudice, or prejudice arising from the consumption of unwholesome food. The prejudice is that which the ordinary customer suffers, viz., that which is suffered by anyone who pays for one thing, and gets another of inferior quality. . . . The words 'to the prejudice of the purchaser' are necessary, because if they had not been inserted, a person might have received a superior article to that which he demanded and paid for, and yet an offence would have been committed." The result is, that it is never necessary to prove any actual damage to the purchaser in order to obtain a conviction under this section, and that the words

"to the prejudice of the purchaser" are only inserted, as Mellor, J., points out, to prevent such an absurdity as a prosecution for selling a better article than the one demanded.

Further, it was decided in *Pearks, Gunston and Tee, Limited* v. *Ward, supra*, p. 16, that it is enough to show that any ordinary purchaser would be prejudiced, even though the person who actually bought the sample, owing to some special circumstance, has not been prejudiced at all.

(*d*) **"Nature, substance, and quality."**—In *Davidson* v. *M'Leod, ante*, the judges held that the words "*nature, substance, and quality*," could not be disjoined, and that the article sold must be different in all three respects from the article demanded, and that as the statute was intended to strike only at foreign admixtures, the very nature of the substance must be altered, or the offence contemplated could not be committed. By s. 2 of the Act of 1879 (see *post*, p. 106), it is provided that it shall not be a good defence to prove that the article of food or drug in question, though defective in nature, or in substance, or in quality, was not defective in all three respects.

(*e*) **"The article demanded"** is the article known commercially under that name. In *Pashler* v. *Stevenitt* (1876), 41 J. P. 136; 35 L. T. 862, the appellant sold as gin a liquid composed of 26 per cent. of alcohol, 70 per cent. of water, and 4 per cent. of sugar. It was proved that gin was sold by retailers at a strength varying from proof to 20 degrees under proof. This liquid was 44 degrees under proof, and although the analyst said he should call it gin whose alcoholic strength was exceedingly low, the justices convicted the appellant. The conviction was upheld by the High Court, and Cleasby, B., said: "This was not an article of the nature, substance, and quality of the article demanded by the purchaser. . . . The justices have come to the conclusion that a mixture of alcohol and water so far as 44 per cent below proof is not of the quality of gin as known commercially. . . . It is impossible for us to say that they were wrong." It should be noted that since the decision of this case the Act of 1879 (s. 6) has fixed the minimum strength for gin at 35 degrees under proof.

In *Sandys* v. *Rhodes* (1903), 67 J. P. 352, a grocer was prosecuted for selling a variety of tapioca as sago. The justices found that the public and the trade generally knew this substance as sago, and that there was no appreciable difference in cost between the two. The High Court held that no offence had been committed. The same decision was given in *Anderson* v. *Britcher* (1913), 78 J. P. 65; 110 L. T. 335; 30 T. L. R. 78; 12 L. G. R. 10, where cane sugar from Mauritius was sold as "Demerara sugar," but the magistrate found as a fact that Demerara sugar now means yellow crystallised cane sugar regardless of place of origin. The High Court compared "Demerara sugar" to "Cambridge sausages" and "Bath buns."

If the article demanded has some recognised standard of quality or composition, it is an offence against the section to sell an article which does not come up to that standard, and if there is no statutory standard, the justices must fix one for themselves upon the evidence (*Roberts* v. *Leeming* (1905), 69 J. P. 417; 3 L. G. R. 1031, and *Wilson* v. *McPhee* (1903), 68 J. P. 175; 6 Fraser (J. C.) 10; 4 Adam, 310; 41 Sc. L. R. 195).

In *Rudd* v. *Skelton Co-operative Society, Limited* (1911), 75 J. P. 326; 104 L. T. 919; 20 Cox C. C. 469, "lardine" was sold containing 25 per cent. of water. Lardine is a new substitute for lard, containing cheap fats instead of pigs' fat; about one-sixth of the samples of it contain more or less water, and the rest do not. The justices thought that as there was no statutory standard for this substance and no sufficient evidence as to what it really is, they must dismiss the summons, but Lord Alverstone, C.J., and Ridley, J. (*dissentiente* Bray, J.), sent the case back to them to find whether the sample was adulterated or not.

Milk.—It has for some time past been generally recognised by analysts that genuine milk contains at least 3 per cent. of milk fat and at least 8·5 per cent. of other solids, and this standard has to some extent been definitely established by the Sale of Milk Regulations, 1901 and 1912 (Appendix, *post*, p. 226), made under s. 4 of the Act of 1899, which provide that milk containing less than 3 per cent. of milk fat, or less than 8·5 per cent. of milk solids other than milk

fat, is to be presumed not to be genuine until the contrary is proved. A similar presumption is to arise in the case of skimmed or separated milk containing less than 8·7 per cent. of milk solids other than fat. It should be observed that these Regulations do not absolutely fix a standard of genuineness, but merely shift the burden of proof from the prosecution to the defendant in cases to which they apply See the remarks on this subject in a circular letter of the Board of Agriculture, dated December 28th, 1901, in the Appendix, *post*, p. 247. It is, however, often difficult in practice to prove the genuineness of milk which falls below the standard. The following cases show the view that has been taken in the courts upon this question from time to time.

In *Lane* v. *Collins* (1884), 14 Q. B. D. 193; 49 J. P. 89; 54 L. J. M. C. 76; 52 L. T. 257; 33 W. R. 365, a milk seller was prosecuted for selling skim milk as milk. The magistrates acquitted him on the ground that skim milk is a kind of milk, and MATHEW and DAY, JJ., held that the acquittal was right. The argument was extremely short, no authorities being cited to the court, and the decision does not appear to have been followed in any subsequent case. In *Smithies* v. *Bridge*, *infra*, Lord ALVERSTONE, C.J., said that *Lane* v. *Collins* was decided on its own special facts, and that he did not know that he would have agreed with the decision. It is suggested that *Lane* v. *Collins* cannot now be regarded as law; and the point is now covered by the Sale of Milk Regulations, *post*, p. 226.

In *Banks* v. *Wooler* (1900), 64 J. P. 245; 81 L. T. 785 19 Cox C. C. 432, the defendant had sold milk which contained 3·55 per cent. of fat (more than the standard), and 7·46 per cent. of other solids (less than the standard), and the analyst certified that 10 per cent. of water had been added. The magistrates said that the milk was exceptionally good, and that the offence was trifling, and dismissed the case. CHANNELL and BUCKNILL, JJ., said that if the magistrates meant that the milk was exceptionally good after the adulteration they were justified in dealing with the case as they did. This does not mean that an offence had not been committed, but merely that it was of such a trifling nature as not to call for the infliction of a fine or

costs. As to this point, see also *Preston* v. *Redfern*, *post*, p. 29.

But the actual product of the cow must not be sold as milk if, owing to improper treatment of the animal, it falls so far below the standard that it cannot fairly be regarded as milk. In *Smithies* v. *Bridge*, [1902] 2 K. B. 13; 66 J. P. 740; 87 L. T. 167; 50 W. R. 686, a milk seller sold milk which was deficient in fat to the extent of 29·7 per cent. The milk was sold in the same state as when it came from the cow, and the deficiency arose from the fact that the cow had not been milked for sixteen hours, during which period much of the fat was absorbed. The magistrates convicted, and Lord ALVERSTONE, C.J., and CHANNELL, J. (*dissentiente* DARLING, J.), held that the conviction was right. The majority of the court expressed an opinion that genuine milk produced by a diseased or improperly treated cow ought not to be sold as milk. And in *Marshall* v. *Skeet* (1912), 77 J. P. 173; 108 L. T. 1001; 23 Cox C. C. 435; 29 T. L. R. 152; 11 L. G. R. 259, where the deficiency in fat was 26 per cent., the only other evidence was that another sample from the same milking was 1 per cent. above the standard, and a sample from another milking of the same cows 3 per cent. below it. The justices expressed an opinion that the milk was as it came from the cows, and acquitted the defendant, but the High Court held that they ought to have convicted. But in *Wolfenden* v. *McCulloch* (1905), 69 J. P. 228; 92 L. T. 857; 20 Cox C. C. 864; 3 L. G. R. 561, where the deficiency was 6·25 per cent., the justices found that it arose from the cow not having been milked for fourteen hours, which was the usual practice in the district, but felt bound to convict on the authority of *Smithies* v. *Bridge*. The High Court held that the justices ought to have inquired whether the article sold was of the nature, substance, or quality of milk, and that under the circumstances there was no evidence upon which they could convict. *O'Driscoll* v. *Dolan* (1910), 45 Ir. L. T. 144, was a similar case.

It is suggested that, except in Scotland, the undiluted and unskimmed product of the cow ought not to be regarded as being of the nature, substance, or quality of milk, if it falls very seriously below the standard; and this view is

taken by the Board of Agriculture in their official report in 1911. In Scotland, however, the decision of *Smithies* v. *Bridge* is not recognised as law (*Scott* v. *Jack*, [1912] S. C. (J.) 87; 49 Sc. L. R. 989).

By ss. 1—4 of the Milk and Dairies Act, 1914, *post*, pp. 183—189, restrictions are placed upon the sale of milk which is unwholesome, though not actually adulterated.

Butter.—It has long been recognised by analysts that properly made butter ought not to contain more than 16 per cent. of water; and by the Sale of Butter Regulations, 1902 (Appendix, p. 229), it is provided that butter containing more than this percentage of water is not to be regarded as genuine until the contrary be proved. This standard is also recognised by ss. 4 and 5 of the Act of 1907, *post*. In *Pearks, Gunston and Tee, Limited* v. *Knight* and *Same* v. *Van Tromp*, [1901] 2 K. B. 825; 65 J. P. 822; 70 L. J. K. B. 1002; 85 L. T. 379; 50 W. R. 104; 20 Cox C. C. 46, the appellants had sold as butter a mixture of butter and milk which, by reason of such admixture, contained 22·5 per cent. of water. The magistrate held that the mixture was not butter, and WILLS and KENNEDY, JJ., approved his decision, apparently rather upon the ground that butter and milk is not butter than on account of the excess of water.

It is none the less "butter" because it contains salt or a preservative. See s. 3 of the Margarine Act, 1887, *post*, p. 117, and the case of *Roose* v. *Perry & Co.* (1900), 44 Sol. J. 503.

But as to the use of preservatives in butter, see ss. 5 and 7 of the Act of 1907, *post*, pp. 174, 177.

Restrictions are placed upon the manufacture and sale of "milk-blended butter" by the Act of 1907, *post*.

Margarine.—Notwithstanding the technical meaning given to the term "margarine" in the Sale of Food and Drugs Acts (see s. 13 of the Act of 1907, *post*, p. 182), there is a definite substance sold commercially under that name, and the purchaser who asks for it is entitled to get it pure (*Burton* v. *Mattinson* (1902), 66 J. P. 628; 86 L. T. 770; *Roberts* v. *Leeming* (1905), 69 J. P. 417: 3 L. G. R. 1031).

It must not contain more than 16 per cent. of water (s. 4 of the Act of 1907, *post*, p. 173).

Drugs.—The question often arises whether the British Pharmacopœia has fixed an absolute standard for drugs. In *White* v. *Bywater* (1887), 19 Q. B. D. 582 ; 51 J. P. 821 ; 36 W. R. 280, a chemist sold some tincture of opium which contained less alcohol and opium than that prepared according to the standard of the British Pharmacopœia :—*Held*, by Lord COLERIDGE, C.J., and A. L. SMITH, J., that he ought to have been convicted of an offence under this section, although the purchaser had not asked for tincture of opium prepared according to the standard of the British Pharmacopœia ; and A. L. SMITH, J., said : "Tincture of opium must mean the article known in commerce as tincture of opium. The thing supplied was not tincture of opium of commerce, but an inferior article."

But the British Pharmacopœia must state in terms or by necessary inference the composition of the article. In *Hudson* v. *Bridge* (1903), 67 J. P. 186 ; 19 T. L. R. 369, the article sold was vinegar of squills, and it contained only 2·5 per cent. of acetic acid. The British Pharmacopœia, 1898, does not state in terms what the composition of vinegar of squills is when made, but contains a recipe for making it in a particular way from certain ingredients in certain proportions, the result of which would be that the article, when freshly made, would contain 4·27 per cent. of acetic acid ; this amount, however, continuously decreases, even with careful storing, owing to internal chemical changes. The King's Bench Division held that there is no standard for the drug.

There are several cases in which the Pharmacopœia gives only the formula for manufacture, and where the product is liable to evaporation or chemical change ; but in others tests for the finished product are given, as well as the formula, and it may well be that different considerations might apply to these.

An attempt is sometimes made to prove that there is a commercial standard for the drug other than that of the British Pharmacopœia. In *Dickins* v. *Randerson*, [1901] 1 K. B. 437 ; 65 J. P. 262 ; 70 L. J. K. B. 344 ; 84 L. T. 204 ; 19 Cox C. C. 643, a chemist sold mercury ointment containing

12·5 per cent. of mercury. According to the British Pharmacopœia it should contain 48·5 per cent. The chemist brought a quantity of evidence to show that it is the universal practice among druggists to supply the weaker ointment unless the stronger one is prescribed or specially asked for. The justices convicted him in spite of this evidence, and BRUCE and PHILLIMORE, JJ., held that the conviction was right.

In *Boots' Cash Chemists (Southern), Limited* v. *Cowling* (1903), 67 J. P. 195; 19 T. L. R. 370, a chemist sold liniment of soap made with methylated spirit, and not with alcohol as prescribed by the British Pharmacopœia. He tendered evidence to show that there is a commercial standard for the drug, different from that of the British Pharmacopœia, but the evidence was rejected by the magistrate on the authority of *Dickins* v. *Randerson, supra*. Lord ALVERSTONE, C.J., and WILLS and CHANNELL, JJ., held that the evidence ought to have been received, but expressly refrained from giving any opinion as to what its value might be, and sent the case back for rehearing. The effect of these two cases seems to be that the standard of the British Pharmacopœia is not conclusive, but that very strong evidence is necessary to displace it.

On the other hand, if the article demanded has no recognised standard of quality or composition, *e.g.*, cream, no offence is committed by selling an article of low quality but genuine. In the case of *Hoyle* v. *Hitchman, ante*, LUSH, J., referred to *Davidson* v. *M'Leod*, and while dissenting from the views of some of the judges expressed therein, said: "The decision itself seems to me to be correct. The article there demanded and supplied was cream. It was admitted that it contained no foreign admixture or adulteration, but it was cream of an inferior quality to that ordinarily sold in Glasgow. Cream is not an article having any standard of quality. It varies with the character of the cows from which the milk comes and the food on which they are fed. This was genuine cream though of inferior quality. It appears to me that the sale in such a case was not an offence within the Act at all. In the present case the article demanded was milk; that supplied was milk and water. It was an adulterated article."

A similar decision was given in the Scotch case of *Morton* v. *Green* (1881), 8 Rettie (J. C.) 36; 4 Coup. 437, where it was held that the sale of an inferior, though pure, quality of cream at a low price, was not an offence within the statute.

In *Smith* v. *Wisden* (1901), 66 J. P. 150; 85 L. T. 760, marmalade was sold which contained 13 per cent. of glucose instead of cane or beet sugar. Evidence was given that for many years glucose had been used by some marmalade manufacturers, but not by all, and that its use had a tendency to prevent mildew; but the justices convicted the seller. The King's Bench Division held that there was no evidence to show that this substance was not "marmalade," and they quashed the conviction. Similarly, in the Scotch case of *Wilson* v. *McCutcheon* (1902), 4 Adam, 34; 40 Sc. L. R. 31, the complaint stated that the defendant had sold marmalade which was not of the nature, substance, and quality demanded, in respect that it contained 14 per cent. of starch glucose. The Court of Justiciary held that there is no recognised standard for marmalade, and that the complaint disclosed no offence.

An accidental introduction of a small quantity of deleterious matter into an article sold for food does not of necessity make it different in nature, substance, and quality from the article demanded (*per* Lord ALVERSTONE, C.J., in *Goulder* v. *Rook* and *Bent* v. *Ormerod*, [1901] 2 K. B. 290; 65 J. P. 646; 70 L. J. K. B. 747; 84 L. T. 719; 49 W. R. 684). As to this, see also sub-s. (4) of this section, *ante*, p. 9.

It should be noted that if an article sold is altogether different from that which was demanded by the purchaser, it is an offence under this section. See *Knight* v. *Bowers* (1885), 14 Q. B. D. 845; 49 J. P. 614; 54 L. J. M. C. 108; 53 L. T. 234; 33 W. R. 613; 15 Cox C. C. 728, where saffron was asked for and savin supplied. If this were not so, many offenders would escape; as, for instance, those who sell lard for butter, or chicory for coffee.

The abstraction of a constituent from any article of food is provided for by s. 9, *post*, p. 38.

The question whether the article sold is the article demanded by the purchaser is one of fact for the justices (*Webb* v. *Knight* (1877), 2 Q. B. D. 530; 41 J. P. 726; 46 L. J. M. C. 264; 36 L. T. 791; 26 W. R. 14). See also the

judgments of GROVE, J., in *Pashler* v. *Stevenitt, supra*, and Lord ALVERSTONE, C.J., in *Goulder* v. *Rook, supra*, and *Friend* v. *Mapp* (1904), 68 J. P. 589 ; 2 L. G. R. 1317.

In determining the above question, the justices are entitled to use any special knowledge that they may possess as to what is known commercially under any particular name, even though no evidence may be forthcoming upon the point. See *R.* v. *Field* (1895), 64 L. J. M. C. 158, where a Gosport grocer had sold a packet of cocoa containing 80 per cent. of starch and sugar. The justices, who were all retired naval officers, had a large experience of cocoa, which forms one of the regular rations on his Majesty's ships. Acting on the knowledge so acquired, and without hearing any evidence as to the composition of cocoa as sold commercially, they came to the conclusion that the starch and sugar had not been added fraudulently, notwithstanding the fact that the analyst had certified that the cocoa was adulterated, and being of opinion that the offence, if any, was quite trifling, they discharged the accused under the provisions of s. 16 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). Their action was approved by the court.

The principle of the above case was followed in *Shortt* v. *Robinson* (1899), 68 L. J. Q. B. 352 ; 63 J. P. 295 ; 80 L. T. 201 ; 19 Cox C. C. 243, where the justices acted upon knowledge derived in the course of the case from a document which would not have been admissible as evidence in a court of law. The article in respect of which the prosecution was instituted was caper tea, and the analysis showed that the sample in question was adulterated with 3·5 per cent. of mineral matter. In the cross-examination of the analyst, a report of the authorities at Somerset House on the subject of caper tea was put to him with a view to showing that extraneous matter is necessarily present in caper tea, owing to its method of production. The justices rightly refused to admit the report as evidence, but nevertheless read and acted upon it, acquitting the defendant, on the ground that the presence of 3·5 per cent. of extraneous matter in caper tea did not constitute an adulteration. The High Court (LAWRANCE and CHANNELL, JJ.) declined to interfere with their decision.

In *Preston* v. *Redfern* (1912), 76 J. P. 359 ; 107 L. T.

410; 23 Cox C. C. 166; 28 T. L. R. 435; 10 L. G. R. 717, a sample of milk contained 12 per cent. of added water, but the churn was not stirred before taking it. No evidence was given for the defendant. The justices were of opinion from their own knowledge, that the sample did not fairly represent the bulk, and that the deficiency of solids might be due to other causes, so they dismissed the summons on the ground that the milk was of good quality and the offence, if any, trivial. The High Court held that they were not entitled to use their own knowledge to say that no offence had been committed, but that they might do so to say that the milk was of good quality and the offence trivial; that on the facts they had grounds for coming to the latter conclusion, but that the case must not be taken as a precedent.

(*f*) **The Purchaser.**—In the case of drugs supplied under the provisions of the National Insurance Act it is doubtful whether the "purchaser" is the patient who receives the drug or the local insurance committee who pay for it.

(*g*) **Penalty.**—The penalty upon a second conviction may be increased to £50, and upon any subsequent conviction to £100. See s. 17 of the Act of 1899 (p. 150), which also provides for the imprisonment of the offender under certain circumstances.

By s. 14 of the Licensing Act, 1874, it is provided, that all convictions for selling adulterated drinks "shall be entered in the proper register of licences."

(*h*) **Burden of Proof.**—It is for the defendant to prove that he is protected by any of these exceptions. See s. 24, *post*, p. 76.

(*i*) **Preservatives.**—As to the use of these, see s. 7 of the Act of 1907 (*post*, p. 177).

Spirits.—With respect to the addition of water to spirits, see s. 6 of the Act of 1879 (*post*, p. 114).

(*k*) **Proprietary Medicines.**—Proprietary medicines are by this sub-section excluded from the operation of the Sale of Food and Drugs Acts. In the case of the adulteration of a

proprietary medicine, therefore, the purchaser would be driven to his common law remedy. The seller might also, in certain circumstances, be liable to a prosecution under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2.

(*l*) **"Compounded as in this Act mentioned."**—This sub-section is practically inoperative. In *Beardsley* v. *Walton & Co.*, [1900] 2 Q. B. 1; 64 J. P. 436; 69 L. J. Q. B. 344; 82 L. T. 119; 19 Cox C. C. 447, CHANNELL, J., said: "There is nothing in the Act as to how drugs are to be compounded. The only way in which this omission can be accounted for is that the Bill as originally drafted contained a definition of the expression 'compounded drugs' which was dropped out of it during its progress through Parliament, while the expression 'drug compounded as in this Act mentioned' was left in by an oversight. The result is that s. 6 (3) has practically no operation."

(*m*) **"Unavoidably mixed."**—The Act implies reasonable care. Where the foreign ingredient is present in larger proportion than is ordinarily found in a commercial article, the practice is to regard the excessive quantity present as an adulteration; for instance, in the case of pepper, where sand is in excess. In *Shortt* v. *Robinson*, *ante*, p. 29, it was held that owing to the method in which caper tea is produced the presence of 3·5 per cent. of mineral matter in the tea did not constitute an adulteration, and that the seller was protected by this sub-section.

In *Warnock* v. *Johnstone* (1881), 8 Rettie (J. C.), 55; 4 Coup. 509, the defendant was prosecuted for selling buttermilk adulterated with 30 per cent. of added water. It was proved that the addition of some water was necessary in the process of manufacture, but that the quantity varied, and depended for the most part upon the state of the temperature. The High Court of Justiciary in Scotland held that the defendant was excused under sub-s. (4). This percentage seems extremely high. See the chemical note on the adulteration of milk, *post*, pp. 303—305.

In *Bosomworth* v. *Bridge* (1892), 36 Sol. J. 594, a butterman was convicted of selling butter containing 21½ per cent. of water. In stating a case for the opinion of the High

Court the magistrates said that evidence had been given on behalf of the defendant to show that the water had been unavoidably mixed in the course of preparation, and also that it had been added in order to make the butter in a fit state for carriage, but they did not say whether they believed the evidence or not. WRIGHT and COLLINS, JJ., sent the case back for them to find the facts definitely on this question. Compare *Pearks* v. *Knight*, *ante*, p. 25.

See also the remarks of Lord ALVERSTONE, C.J., at the end of his judgment in *Goulder* v. *Rook*, cited *ante*, p. 28.

7. *Compound Articles of Food and Compounded Drugs.*—No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser (*a*), under a penalty (*b*) not exceeding twenty pounds.

This section would seem to be intended to apply to such foods as are universally known and sold as compound articles, the composition of which is distinctly recognised or indicated. In the case of "drugs," it applies more particularly to "prescriptions" or "recipes," medical or otherwise, and it would be an offence under the section when they are not compounded in strict accordance with them. Any offence under this section is also punishable under s. 6, *ante*. See *Beardsley* v. *Walton*, [1900] 2 Q. B. 1; 64 J. P. 436; 69 L. J. Q. B. 344; 82 L. T. 119; 19 Cox C. C. 447; and *Dickins* v. *Randerson*, [1901] 1 K. B. 437; 65 J. P. 262; 70 L. J. K. B. 344; 84 L. T. 204; 19 Cox C. C. 643. This accounts, no doubt, for the small number of prosecutions which have taken place under s. 7.

(*a*) **The Purchaser.**—In the case of prescriptions made up under the provisions of the National Insurance Act it is doubtful whether the "purchaser" is the patient who receives the medicine or the local insurance committee who pay for it.

(*b*) **Penalty.**—See note (*g*) to s. 6, *supra*, p. 30.

8. *Protection from Offences by giving Label.*—Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently (*a*) to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice (*b*), by a label distinctly and legibly written or printed (*c*) on or with the article or drug, to the effect (*d*) that the same is mixed.

(*a*) "**Fraudulently.**"—When a mixture is sold in a labelled package, the justices must determine whether the admixture has been made for any of the fraudulent purposes mentioned in the section. This is, of course, purely a question of fact, as will be seen from the following cases. It is no defence to plead that the article was sold in the same state as when it was received from the manufacturer.

In *Liddiard* v. *Reece* (1880), 44 J. P. 233, when the inspector asked for coffee he received a packet with a label describing it as a mixture of coffee and chicory. The analyst's certificate showed that it was composed of 60 per cent. of chicory and 40 per cent. of coffee. The magistrates decided that the seller was not protected by the label, as the 60 per cent. of chicory was used for the purpose of fraudulently increasing the bulk or weight of the coffee, and convicted the defendant. This conviction was upheld in the High Court. *Star Tea Co.* v. *Neale* (1909), 73 J. P. 511; 8 L. G. R. 5, was a similar case.

In *Horder* v. *Meddings* (1880), 44 J. P. 234, a mixture was sold under similar circumstances to those in *Liddiard* v. *Reece*, *supra*, except that the mixture contained 85 per cent. of chicory instead of 60. The defendant, besides pleading the label in defence, urged that he sold the article in the condition in which he received it from the manufacturer. The magistrate found that the chicory had been added fraudulently. This decision was upheld by the High Court

and LUSH, J., said that the magistrate was bound to find whether the chicory was used fraudulently to increase the bulk; that if it was so used he ought to convict, notwithstanding the label; and that it was no defence for the vendor to say that he sold it just as he had received it from the manufacturers.

In *Otter* v. *Edgley* (1893), 57 J. P. 457, the facts were somewhat different. An inspector had entered a shop and asked for "French coffee," and had been supplied with a mixture containing 60 per cent. of chicory and 40 per cent. of coffee. Upon the tin was a label stating that it was a mixture, and his attention had been called to the label. There was also evidence that "French coffee" was a well-known commodity, and that the description was not misleading; but the magistrates had convicted the seller on the ground that the chicory had been added fraudulently to increase the bulk, etc. The High Court, however, held that there had been no evidence of fraud, that the seller was protected by the label, and that the conviction was wrong.

A similar decision was given in *Jones* v. *Jones* (1894), 58 J. P. 653. The mixture sold in that case consisted of 30 per cent. of cocoa and 70 per cent. of starch and sugar, and it was held that a label stating it to be a mixture, in the absence of any evidence of fraud (nearly all cocoas, it will be remembered, are mixtures), was a sufficient protection to the seller.

In *Hayes* v. *Rule and Law* (1902), 87 L. T. 133; 18 T. L. R. 535, the purchaser asked for "best fresh butter," and was supplied with "Pearks' butter," *i.e.*, a mixture of butter and milk, containing over 20 per cent. of water. The butter was handed to him in a wrapper on which was a printed label in the same terms as that in *Pearks* v. *Houghton*, *post*, p. 35. The justices considered that although the butter was not "best fresh butter," yet the defendants were protected by the label, and the King's Bench Division held that they were right. The sale of such butter is now regulated by the Act of 1907, *post*.

(*b*) **Notice.**—A question sometimes arises as to whether the attention of the purchaser need be called to the notice on the label or not. In *Jones* v. *Jones*, *supra*, the tin of cocoa in

question with the label upon it, was wrapped in a sheet of opaque white paper before delivery to the purchaser, who had no opportunity of seeing the label, nor was his attention called to it. The cocoa was sold at 8*d.* per pound, the price of the best pure cocoa being 2*s.* 8*d.* per pound. MATHEW and CAVE, JJ., held that sufficient notice had been given, and MATHEW, J., said: "There was a label which distinctly stated that the article was mixed. It has been seriously contended that it was no label, because it was wrapped up in opaque paper at the time of being sold. The paper covering was merely the usual way of giving the article to a purchaser. The article has been sold so mixed for thirty years, and must have been well-known to purchasers. To say that there was no label because of it being wrapped up, is an absurdity." This case was distinguished in *Pearks* v. *Houghton*, *infra*, and dissented from in *Batchelour* v. *Gee*, *post*, p. 36, and must be regarded as of doubtful authority.

In *Pearks, Gunston and Tee, Limited* v. *Houghton*, [1902] 1 K. B. 889; 66 J. P. 422; 71 L. J. K. B. 385; 86 L. T. 325; 50 W. R. 605, the appellants sold butter blended with milk in such a way as to cause the butter to contain an excess of water to the extent of 7·8 per cent. They sold it as butter in a wrapper on which was a label in the following terms: "Pearks' butter. This is choicest butter, blended with pure English full cream milk, by new and improved machinery, whereby it retains about 20 to 24 per cent. of moisture, and acquires that delicacy of flavour which has made Pearks' butter so famous. This package weighs half pound including wrapper." The printed wrapper was in turn enclosed in a second wrapper which effectually concealed the printed matter. Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., expressed an opinion that the appellants would not be entitled to rely upon the provisions of s. 8, owing to the presence of the opaque wrapper, and Lord ALVERSTONE, C.J., said: "In my opinion, the delivery of the article with a notice printed on an inner label covered with an opaque wrapper would not be sufficient. *Jones* v. *Jones* is not a sufficient authority on the facts of the present case. There the article sold was a tin of cocoa, and it was assumed to be a matter of common knowledge that tins had

labels on them, and therefore the fact that they were wrapped up when delivered to the purchaser could not prevent the label having the effect of a notice to the purchaser. The question of the sufficiency of the notice is one to be decided on the particular facts of each case; but I doubt whether a purchaser of a pound of butter on being handed such a packet could be taken to have noticed that there was another label inside the outside wrapper. If, therefore, the inner label were the only defence relied upon by the appellants, I should not be prepared to say that their contention was right." For the other defence upon which the decision of the case really turned see note (*c*) to s. 6, *ante*, p. 16.

In *Batchelour* v. *Gee*, [1914] 3 K. B. 242; 78 J. P. 362; 111 L. T. 256; 30 T. L. R. 506, a pot of cream containing boric acid with a proper label was given to the purchaser in a paper bag so that he did not, and could not, see the label, and his attention was not called to it. It was held that the seller had not in fact given notice to the purchaser of the presence of boric acid, and that he was not protected by the label. *Jones* v. *Jones*, *supra*, was dissented from, and *Pearks* v. *Houghton*, *supra*, approved and followed. See also *World's Tea Co.* v. *Gardner* and *Toler* v. *Bischop*, *post*, p. 123.

Other Means of Giving Notice.—It should, of course, be borne in mind that the delivery of a label in accordance with the requirements of s. 8 is not the only means available for giving the purchaser notice of what he is purchasing. In *Sandys* v. *Small*, *ante*, p. 13, COCKBURN, L.C.J., said in his judgment: "Section 8 provides a mode by which the seller may insure himself against the possibility of the enactment operating to his prejudice. If he delivers the label as provided by that section, he protects himself against the possibility of being charged with an offence under the Act. If he does not, then I think it is incumbent on him to prove that by some other means the purchaser had notice of what he was purchasing. . . . I do not think the statute means that the affixing of the label is to be the only mode of bringing knowledge home to the purchaser. I think if a man puts up in a conspicuous position a notice in large letters, as was done here, and it is clear that it must have come under the observation of the customer, that the 6th section would not apply."

This proposition is well illustrated by *Gage* v. *Elsey*, and the other cases collected under note (*c*) to s. 6, *ante*, p. 13. Care should also be taken not to confuse the two kinds of defence. The label supplied on or with the article sold constitutes a defence under s. 8, but where the purchaser's attention is called to the true nature of the article sold by a notice either given verbally or displayed upon the premises, the seller's ground of defence is that the sale was not to the prejudice of the purchaser within the meaning of s. 6. In *Wadd* v. *Brayly* (1887), 51 J. P. 423, which was an appeal to quarter sessions, a grocer was convicted under s. 6 of selling butterine as butter. He sold both butter and butterine, and it was his custom, when exposing the two for sale, to distinguish them by placards placed in his shop window. But on the particular occasion in question the placards had been removed in order that the window might be cleaned. The learned recorder who tried the case is reported to have said that had it not been for this the grocer would have had a defence under s. 8, but if he did say so, he was wrong to this extent, that although the grocer would have undoubtedly had a defence, it would not have been a defence under s. 8, but a defence that the purchaser was not prejudiced within the meaning of s. 6.

(*c*) **"Legibly Written or Printed."**—An interpretation of these words is given in s. 12 of the Act of 1899, *post*, p. 147.

(*d*) **"To the Effect that the Same is Mixed."**—These words in themselves make it plain that it is not necessary to state with what, or to what extent, the article has been mixed; only a general statement that it is a mixture need be given; see *Otter* v. *Edgley* and *Jones* v. *Jones* in note (*a*), *supra*. Similarly in *Pope* v. *Tearle* (1874), L. R. 9 C. P. 499; 37 J. P. 485; 43 L. J. M. C. 129; 30 L. T. 789; 22 W. R. 950, a case decided under s. 3 of the repealed Act of 1872, which made it an offence to sell certain mixed articles of food without "declaring such admixture" to the purchaser, a grocer had sold mustard mixed with flour and turmeric. There was a label on the canister "Warranted free from injurious admixture, but not sold as pure mustard." The court (Lord COLERIDGE, C.J., and BRETT and GROVE, JJ.) held that the label was sufficient, and that the

grocer was not bound to declare " the nature or quantities of the materials admixed." But in *Star Tea Co.* v. *Neale* (1909), 73 J. P. 511 ; 8 L. G. R. 5, some of the judges thought that the words " Coffee Mixture " were not a sufficient disclosure of the fact that the coffee contained 74 per cent. of chicory.

9. *Abstraction of Part of an Article of Food before Sale.*—No person shall, with the intent that the same may be sold in its altered state without notice, abstract (*a*) from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell (*b*) any article so altered without making disclosure (*c*) of the alteration, under a penalty in each case not exceeding twenty pounds (*d*).

This section applies to the abstraction of an important ingredient of any commodity ; but it was specially intended to make the removal of cream from milk a punishable offence. Unlike s. 6, *ante*, it applies to the person who actually alters the article, as well as to the person who sells it when altered. It should further be noticed that s. 8 does not apply to this section, and that therefore the giving of a label is no defence to a prosecution under it, unless the label sufficiently discloses the nature of the alteration, and unless the purchaser's attention is called to it at the time of the sale. See notes (*a*) and (*b*), *infra*. For the question whether a warranty affords a defence to a prosecution under this section, see note (*b*) to s. 25, *post*, p. 76.

(*a*) **" Abstract."**—By the Sale of Milk Regulations, 1901 and 1912, *post*, p. 226, if a sample of milk contains less than 3 per cent. of milk fat, or 8·5 per cent. of non-fatty solids, or a sample of skimmed or separated milk contains less than 8·7 per cent. of milk solids other than fat, it is to be presumed that abstraction has taken place or that water has been added.

(*b*) **Guilty Knowledge.**—If at the time of sale the vendor gives due notice to the purchaser that the cream has been abstracted, he is not liable. But if no such notice has been

given, it is no defence to a prosecution under this section for him to plead that he had no knowledge of the alteration at the time of the sale—unless, of course, he can produce a written warranty in accordance with the provisions of s. 25, *post*. This point has been authoritatively settled by *Pain* v. *Boughtwood* (1890), 24 Q. B. D. 353 ; 54 J. P. 469 ; 59 L. J. M. C. 45 ; 62 L. T. 284 ; 38 W. R. 428 ; 16 Cox C. C. 747, a case stated by one of the metropolitan police magistrates, where the respondent, a milk seller, had sold milk from which 28 per cent. of the original fat had been abstracted, without making disclosure of the alteration. No evidence was given that the person selling the milk had knowledge of the alteration, and the respondent gave evidence that he had no such knowledge. His daughter, who sold the milk, also denied all knowledge of the alteration. The magistrate, for this reason, had dismissed the summons ; but the court held that he was wrong, and that a person selling the altered article could be convicted under s. 9, although at the time he sold it he did not know of the alteration. In the course of his judgment GRANTHAM, J., said : " . . . by s. 25 the seller is given a power of protecting and exonerating himself by obtaining a written warranty from the person who has supplied the article to him. In the present case, the respondent ought to have provided himself with a written warranty, and then he could have handed it over to the inspector, who could thereupon have proceeded against the person who had actually committed the fraud. If that course is not taken, the legislature assumes that the seller has been a party to what has been done. Every precaution is taken in the statute to enable a person honestly selling the article without knowledge to defend himself against a charge made under s. 9." CHARLES, J., added that *Betts* v. *Armstead*, *ante*, p. 10, was a judicial exposition of the meaning of the Act, and must be followed.

This decision was followed in *Dyke* v. *Gower*, [1892] 1 Q. B. 220 ; 56 J. P. 168 ; 61 L. J. M. C. 70 ; 65 L. T. 760 ; 17 Cox C. C. 421, which was also a case stated by a metropolitan police magistrate. The facts were as follows : The respondent, a retail milk-seller, poured into a pail eight gallons of unskimmed milk, which she sold therefrom to her customers

in small quantities, dipping it out of the pail from time to time with a measure. The sale of the contents of the pail extended over a space of between four and five hours, during the whole of which time, owing to the neglect of the respondent to keep the milk stirred, the cream was continually rising to the surface. When not more than two quarts of milk remained, the appellant purchased of the respondent a pint of milk from the pail, which, upon analysis, showed a deficiency of 33 per cent. of fatty matter. The respondent did not disclose to the appellant this deficiency, which was entirely due to the manner in which the earlier customers had been served. The magistrate dismissed the summons; but Lord COLERIDGE, C.J., and WRIGHT, J., held that the words "so altered" in the section refer to a physical alteration of the article, irrespective of the intent with which the alteration is made, and that the respondent, in selling the milk so altered without giving notice of its condition, had been guilty of an offence. Lord COLERIDGE said: "It is not necessary in the interests of the public to prohibit the mere alteration of an article of food unless the alteration is coupled with the intent of selling it in its altered state without notice, for the mere alteration without such intention may be perfectly innocent. Where, however, the alteration is followed by the actual sale, the intent with which the article was altered must become perfectly immaterial, the injury to the purchaser being just the same whether there was a wrongful intent or not."

In *Morris* v. *Corbett* (1892), 56 J. P. 649, the facts were as follows: The servant of a dairyman, being short in his supply of milk, bought two gallons from another dairyman and mixed it with his own. The milk so mixed he sold to various customers. An inspector bought half a pint of it, and it was found to be deficient in cream to the extent of 20 per cent. The dairyman was accordingly prosecuted under this section. The magistrates were of opinion that he had a good defence; but the High Court held that, though neither the dairyman nor his servant knew, or had reason to know, that cream had been abstracted from the milk, this was no defence, and that the case was governed by *Pain* v. *Boughtwood*, and *Dyke* v. *Gower*, *ante*, p. 39.

The same ruling was given in *Spiers and Pond* v. *Bennett*, *infra*, and see the judgment of GIBSON, J., in *Taylor* v. *Nixon*, [1910] 2 I. R. 94.

Special Contract.—A special contract between vendor and purchaser as to the quality of the article to be delivered by the former is no bar to a conviction under this section. In *Fecitt* v. *Walsh*, [1891] 2 Q. B. 304; 55 J. P. 726; 60 L. J. M. C. 143; 65 L. T. 82; 39 W. R. 525; 17 Cox C. C. 322, the appellant contracted to supply milk to a workhouse at a certain price; by the contract the milk was to contain a certain percentage of cream, and it was to be tested on each delivery, and a reduction was to be made in the price in respect of any deficiency in cream. When the daily supply, contained in five cans, was being delivered, the respondent, acting under s. 3 of the Act of 1879, *post*, p. 107, procured a sample from each of the five cans, and subsequently laid informations under this section in respect of two of the samples, in which there was found to be a large deficiency of cream:—*Held*, that the provisions in the contract as to deficiency of cream were immaterial in the determination of the question whether the appellant had committed an offence under the Act:—*Held*, *also*, that there could be two separate informations in respect of the two samples found to be deficient. *Keenan* v. *Costelloe* (1910), 44 Ir. L. T. 218, was a similar case.

(*c*) **"Disclosure."**—The question what is or what is not a sufficient disclosure to satisfy the requirements of this section has been dealt with by the following cases: In *Jones* v. *Davies* (1893), 57 J. P. 808; 69 L. T. 497, Davies sold a tin of condensed milk which had upon it a label on which were printed the words, "Condensed Milk, Swiss Dairy Brand," and in smaller type: "This tin contains skimmed milk." The analysis of the contents of the tin showed a deficiency of 93 per cent. of butter fat; but though the purchaser's attention had not been called to the words on the label at the time of the sale, the court held that this was a sufficient "disclosure of the alteration" under this section. This case was followed in *Platt* v. *Tyler* (1894), 58 J. P. 71.

In *Spiers and Pond* v. *Bennett*, [1896] 2 Q. B. 65; 60 J. P. 437; 65 L. J. M. C. 144; 74 L. T. 697; 44 W. R.

510; 18 Cox C. C. 332, the appellants, were prosecuted under this section for selling milk from which 17 per cent. of cream had been extracted. The deficiency was caused by the milk being poured out in such a way that the greater part of the cream remained in the vessel from which it was poured. The milk was supplied in a glass, whereon were distinctly written in blue colour the words: "Not guaranteed as new or pure milk, or with all its cream; see notices." On the counter a few feet from the place where the purchaser was standing when he was served with the milk, and facing the entrance to the refreshment rooms from the street was placed a framed notice in these words: "Milk notice. Spiers and Pond, Limited, purchase all milk sold by them under a warranty of its purity and genuine quality, and take all possible precautions to ensure its supply to their customers in proper condition, but they are unable to guarantee it as either new, pure, or with all its cream, and (to meet the requirements of the Sale of Food and Drugs Act) do not therefore sell it as such." The High Court (Lord RUSSELL OF KILLOWEN, C.J., and WILLS, J.), reversing the decision of a metropolitan police magistrate, held that the alteration in the milk was sufficiently disclosed.

In *Petchey* v. *Taylor* (1898), 62 J. P. 360; 78 L. T. 501; 19 Cox C. C. 38, a tin of condensed milk was sold as "condensed skimmed milk"; 97 per cent. of the original fat had been abstracted by the use of a separator. It was proved that not more than 63 per cent. can be abstracted by skimming. The magistrate held that the description "skimmed milk" did not properly describe the alteration. The High Court held that it was a question of fact whether the description was sufficient, and that the magistrate's decision could not be interfered with. It seems somewhat difficult to reconcile this case with *Jones* v. *Davies*, *supra*, in which the facts were very similar, but WILLS, J., in his judgment, pointed out that in *Jones* v. *Davies* no evidence was given to show how much cream can be abstracted by skimming, and consequently the point upon which the magistrate decided the later case was never taken.

Petchey v. *Taylor* seems also to differ from its predecessors, *Jones* v. *Davies* and *Spiers and Pond* v. *Bennett*, in this: that, while in *Petchey* v. *Taylor* it was definitely held that

the question of sufficient disclosure is one of fact for the magistrate, with which the court will not interfere, in the two earlier cases the court, after reviewing the facts, reversed the magistrate's decision. The explanation probably is, that the court in the two earlier cases were really of opinion (though they do not appear to have said so in so many words) that there was no evidence at all upon which the magistrates could find as they did.

(*d*) **Penalty.**—The penalty upon a second conviction may be increased to £50, and upon any subsequent conviction to £100. See s. 17 of the Act of 1899, *post*, p. 150, which also provides for the imprisonment of the offender under certain circumstances.

APPOINTMENT AND DUTIES OF ANALYSTS, AND PROCEEDINGS TO OBTAIN ANALYSIS.

10. *Appointment of Analysts.*—In the city of London and the liberties thereof the Commissioners of Sewers of the city of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis (*a*), the court of quarter sessions of every county (*b*), and the town council of every borough (*c*) having a separate court of quarter sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment, may, as soon as convenient after the passing of this Act, where no appointment has been hitherto made, and in all cases as and when vacancies in the office occur, or when required so to do by the Local Government Board, shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill, and experience, as analysts of all articles of food and drugs

sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper; but such appointments and removals shall at all times be subject to the approval of the Local Government Board, who may require satisfactory proof of competency (*d*) to be supplied to them, and may give their approval absolutely or with modifications as to the period of the appointment and removal, or otherwise: Provided, that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place.

In Scotland the like powers shall be conferred and the like duties shall be imposed upon the commissioners of supply (*e*) at their ordinary meetings for counties, and the commissioners or boards of police, or where there are no such commissioners or boards, upon the town councils for boroughs within their several jurisdictions: Provided that one of Her Majesty's Principal Secretaries of State in Scotland shall be substituted for the Local Government Board of England.

In Ireland the like powers and duties shall be conferred and imposed respectively upon the grand jury (*f*) of every county and town council of every borough: Provided that the Local Government Board of Ireland shall be substituted for the Local Government Board of England.

(*a*) **"Vestries and District Boards,"** now metropolitan

boroughs (London Government Act, 1899 (62 & 63 Vict. c. 14)).

(*b*) **"Quarter Sessions,"** now county councils. See s. 3 of the Local Government Act, 1888 (51 & 52 Vict. c. 41).

(*c*) **Borough Analysts.**—The appointment of borough analysts has been considerably altered by the Local Government Act, 1888, ss. 34, 35, 38, 39. Their provisions are somewhat obscure, but the general effect of them appears to be as follows: By ss. 34 and 35 in all county boroughs (*i.e.*, the boroughs enumerated in the Third Schedule to the Act), and in all quarter sessions boroughs, containing a population of 10,000 or upwards by the census of 1881, the borough analyst is to be appointed by the town council, and by ss. 38 and 39, the borough analyst is to be appointed in all other cases by the county council. It is somewhat uncertain whether, in the case mentioned in s. 38, the borough is to be under the county analyst, or whether the county council must appoint a separate analyst for the borough; but the point is of little importance, since the county council can appoint as many analysts as they like for the whole county, and by s. 11 of this Act, a county analyst may also be appointed analyst of a borough.

(*d*) **Proof of Competency.**—See s. 3 (5) of the Act of 1899, and the regulations therein referred to.

(*e*) **"Commissioners of Supply,"** now county councils. See s. 11 (1) of the Local Government (Scotland) Act, 1889 (52 & 53 Vict. c. 50).

(*f*) **"Grand Jury,"** now county councils. See Local Government (Ireland) Act, 1898.

11. *Town Council may engage the Analyst of another Borough or of the County.*—The town council of any borough (*a*) may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment

of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this Act.

(*a*) **Borough Analysts.**—See note (*c*) to s. 10 above.

12. *Power to Purchaser of Article of Food to have it Analysed.*—Any purchaser (*a*) of an article of food or of a drug in any place being a district, county, city, or borough where there is any analyst appointed under this or any Act hereby repealed shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed (*b*) by such analyst, and to receive from him a certificate of the result of his analysis (*c*).

(*a*) **"Any Purchaser,"**—*i.e.*, whether official or private.

(*b*) **Private Purchaser.**—It was formerly a disputed question whether a private purchaser, in buying an article for consumption and having it analysed in pursuance of this section, should conform to the provisions of s. 14, *infra*, but the point has now been authoritatively settled by *Buckler* v. *Wilson*, [1896] 1 Q. B. 83; 60 J. P. 118; 65 L. J. M. C. 18; 73 L. T. 580; 44 W. R. 220 (see the notes to s. 14, *infra*), a case which also goes to show that in the case of a purchase for consumption by a private purchaser, the analysis need not be made by an official analyst. But if a private analyst is employed he would have to be called at the hearing of the information, since his certificate would probably not be admissible in evidence under s. 21. See also note (*a*) to s. 20, *post*, p. 67.

(*c*) By s. 19 of the Act of 1899 a copy of any analyst's certificate obtained by the prosecutor must be served along with the summons. See p. 151, *post*.

13. *Officer named to obtain a Sample of Food or Drug to submit to Analyst.*—Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction (*a*) and at the cost of the local authority (*b*) appointing such officer, inspector, or constable, or charged with the execution of this Act (*c*), may procure any sample of food (*d*) or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed (*e*) by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place; and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed analyse the same and give a certificate (*f*) to such officer, wherein he shall specify the result of the analysis.

Samples of Milk.—Special provisions for taking samples of milk are made by ss. 5 and 6 and Schedule III. of the Milk and Dairies Act, 1914, *post*, pp. 190, 194, 210.

(*a*) **Direction of Local Authority.**—In *Hale* v. *Cole* (1891), 55 J. P. 376, the appellant was a police constable, and the prosecution was under s. 6 for selling gin 44·9 degrees under proof. The constable when he purchased the gin did not prove that he was acting under the direction of the local authority, and the magistrates on these grounds dismissed the prosecution. The High Court, however (DAY and LAWRANCE, JJ.), held that where a constable prosecutes for the adulteration of food, it is not necessary to prove as a condition precedent that he was directed by the local authority appointing him such constable to prosecute, and judgment was accordingly given for the appellant.

In *Ross* v. *Helm*, [1913] 3 K. B. 462; 77 J. P. 13; 82 L. J. K. B. 1322; 107 L. T. 829; 23 Cox C. C. 248; 11 L. G. R. 36, the prosecuting inspector stated in evidence that his

name was "A. Ross, an inspector under the Food and Drugs Acts," and put in the analyst's certificate, which was addressed to "Inspector A. Ross." The justices dismissed the summons on the ground that as the prosecutor had not produced his appointment there was no evidence that he was an inspector; but the High Court held that the above facts were *primâ facie* evidence of his appointment, and CHANNELL and AVORY, JJ., expressed an opinion that it was unnecessary for him to prove that he was an inspector.

In *Connor* v. *Butler*, [1902] 2 I. R. 569, *post*, p. 137, the majority of the judges of the King's Bench Division in Ireland held that the local authority has performed its duty by appointing an inspector, and that when an inspector has once been appointed, he may take any proceedings at his own discretion and without any special authorisation from the authority appointing him.

The words "local authority" here mean any local authority, and are not confined to the class of local authorities who are empowered by s. 10 to appoint analysts (*Worthington* v. *Kyme* (1905), 69 J. P. 390; 93 L. T. 546; 54 W. R. 185; 21 Cox C. C. 37; 3 L. G. R. 1098).

(*b*) **Further Provisions.**—Further powers are given to the inspectors by s. 3 of the Act of 1879, *post*, p. 107, ss. 8 and 10 of the Margarine Act, 1887, *post*, pp. 126, 127, and s. 2 (2) of the Act of 1907, *post*, p. 171. Power is also given by s. 2 of the Act of 1899, *post*, p. 135, and s. 2 of the Act of 1907, *post*, p. 170, to the Local Government Board and the Board of Agriculture, under certain circumstances, to take samples of articles of food, and for this purpose their officers have the same powers as inspectors appointed under the Sale of Food and Drugs Acts. The Commissioners of Customs have also power to take samples of imported articles under s. 1 (3) of the Act of 1899 (*post*, p. 132). Special powers of taking samples of milk are conferred upon the Local Government Board, local authorities, and their agents by the Milk and Dairies Act, 1914, ss. 5 and 6 and Sched. III., *post*, pp. 190, 194, 210.

(*c*) **Purchase by Deputy.**—The effect of this is that the local authority cannot appoint any person other than those named to procure samples for analysis under the Acts; but any officer appointed under this section to procure samples

may purchase them by deputy. Thus, in *Horder* v. *Scott* (1880), 5 Q. B. D. 552 ; 44 J. P. 520, 795 ; 48 L. J. M. C. 97 ; 42 L. T. 660, it was decided that it was not necessary that the officer taking proceedings under s. 20, *post*, should have acted personally in the purchase of the sample.

This decision was followed in *Smith* v. *Stace* (1881), 45 J. P. 141. Here a sanitary inspector went with an assistant to a shop where butter was sold, and sent the assistant into the shop, who bought a pound of butter for a shilling. The assistant came out and gave it to the inspector, who, within two minutes, went inside the shop, and gave notice to the shopkeeper that he had bought it for analysis, and he then and there divided it into parts in pursuance of s. 14 of the Act. The information was then laid by the inspector, and the court held that the purchaser of the article was the inspector, and not the assistant, and that therefore the inspector had properly given notice to the shopkeeper and laid the information.

In *Garforth* v. *Esam* (1892), 56 J. P. 521, an inspector sent his servant into a publichouse to buy gin. When the servant had been inside the house a minute and had paid for the gin with money supplied to him by the inspector for that purpose, the inspector entered, gave the usual notification, and ultimately laid an information against the seller. For the defence it was contended that the inspector did not purchase the gin, that there was no evidence of purchase of gin before the court, and that the servant purchased the gin, and ought, therefore, to have laid the information, or to have been joined as the person prejudiced. The justices dismissed the information on the ground that the inspector was not prejudiced, but stated a case, and the High Court (LAWRANCE and WRIGHT, JJ.) held that they were wrong in so deciding, and gave judgment for the appellant. Similarly in *Macaulay* v. *Mackirdy* (1893), 3 White's Rep. (Sc.) 464, an inspector's duly authorised assistant went to a grocer's shop accompanied by a boy. The boy went in and bought half a pound of salt butter. The assistant then went in and laid his hand on the butter and said it was for the public analyst. The butter proved to be margarine. It was argued for the grocer that the conviction by the sheriff substitute was bad, as it is only the actual purchaser who can prosecute, but the

High Court of Justiciary held that the conviction was right, and the LORD JUSTICE CLERK said: "I hold that a person who sends a messenger to buy the article of food for him is the purchaser within the meaning of the Act."

In *Massey* v. *Kelso* (1902), 4 Fraser (J.C.) 73; 39 Sc. L. R. 645, an inspector asked a street scavenger to go into a shop and buy butter, and gave him the money. The scavenger did so, whereupon the inspector walked into the shop, and took over the butter. The shopman was prosecuted for selling to the inspector, but objected that the sale was to the scavenger. The Court of Justiciary in Scotland overruled the objection.

And the same decision was given in *Tyler* v. *Dairy Supply Co.* (1908), 72 J. P. 132; 98 L. T. 867; 6 L. G. R. 422, although the assistant who actually made the purchase was himself a qualified inspector and competent to take proceedings in his own name.

(*d*) **Sample of Food.**—For directions as to the manner in which samples should be taken, and as to the proper size of the samples, see letter of the Local Government Board, dated February 26th, 1894, and circulars of the Board of Agriculture, dated December 28th, 1901, and July 13th, 1903, in the Appendix, *post*, pp. 242, 247, 251. For seizure and destruction of unsound meat, milk, bread, etc., by any medical officer of health or inspector of nuisances, see ss. 116—119 of the Public Health Act, 1875; and for the power of stopping the sale of unwholesome milk, see Sched. II. of the Milk and Dairies Act, 1914, *post*, p. 208.

(*e*) **Analysis must be Made.**—Where an official purchaser purchases for analysis, it is necessary that the analysis should be actually made, and such analysis is a condition precedent to a prosecution for adulteration, even though the seller admits at the time of the sale that the article sold is adulterated (*Smart* v. *Watts*, [1895] I Q. B. 219; 59 J. P. 54; 64 L. J. M. C. 89; 71 L. T. 768; 43 W. R. 379; 18 Cox C. C. 62). See note (*e*) to s. 14, *infra*. But in the case of a purchase by a private individual an analysis is apparently not a condition precedent to a prosecution. See note (*a*) to s. 20, *post*, p. 67.

(*f*) **Certificate.**—By s. 19 (2) of the Act of 1899 a copy of any analyst's certificate obtained by the prosecutor must be served with the summons. See p. 152, *post.*

14. *Provision for Dealing with the Sample when Purchased.*—The person purchasing (*a*) any article with the intention of submitting the same to analysis shall (*b*), after the purchase shall have been completed, forthwith (*c*) notify to the seller or his agent (*d*) selling the article his intention to have the same analysed (*e*) by the public analyst, and shall [*offer to*] (*f*) divide the article into three parts (*g*) to be then and there separated (*h*), and each part to be marked and sealed or fastened up in such manner as its nature will permit (*i*), and shall, if required to do so [*proceed accordingly, and shall*] (*f*) deliver one of the parts to the seller or his agent (*d*).

He (*k*) shall afterwards retain one of the said parts (*l*) for future comparison and submit the third part, if he deems it right to have the article analysed, to the analyst.

(*a*) **"The Person Purchasing."**—Although prior to 1895 there was some doubt upon the point, it is now well settled that the provisions of this section do not apply to the case of a private purchaser purchasing for consumption. In *Parsons* v. *Birmingham Dairy Co.* (1882), 9 Q. B. D. 172; 46 J. P. 727; 51 L. J. M. C. 111; 30 W. R. 748, it was decided that it is a condition precedent to the right of a private purchaser to take proceedings for a penalty under the Act that he should have given to the seller the notification required by s. 14, and this case was followed by MATHEW and WILLS, JJ., in *Harris* v. *Williams* (1889), 6 T. L. R. 47. But this view was dissented from by the Irish judges in *Enniskillen Union* (*Guardians*) v. *Hilliard* (1884), 14 L. R. Ir. 214, where it was held that the provisions of s. 14 do not apply to the purchase of an article *unless for analysis*, and therefore it is not a condition precedent to the

right of a purchaser *for consumption* to take proceedings for a penalty under the Act that he should have given to the seller the notification required by that section. A similar view was taken by Lord Coleridge, C.J., in *Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181; 57 J. P. 775; 60 L. J. M. C. 146; 65 L. T. 149; 39 W. R. 607, where he said (at p. 187): "Sections 12, 13, 14, 15, and 17 all deal with cases in which the article is not bought *for purposes of use as food*, but for the purpose of *submitting it to analysis*"; and the point has now been authoritatively decided by *Buckler* v. *Wilson*, [1896] 1 Q. B. 83; 60 J. P. 118; 65 L. J. M. C. 18; 73 L. T. 580; 44 W. R. 220. In this case a prosecution was instituted by private purchasers (the guardians of the Louth Union) with whom a grocer had entered into a contract for the supply of "Good fresh butter, English." A parcel of butter supplied under this contract was found upon analysis to contain 25 per cent. of margarine, but the provisions of s. 14 were not complied with by the guardians, and the grocer contended that compliance with the provisions of the section was a condition precedent to a prosecution under the Act. The magistrates nevertheless convicted him, and the High Court (Lord Russell of Killowen, C.J., Pollock, B., and Wright, J.) upheld the conviction. Lord Russell, in delivering the judgment of the court, said: "Two decisions were cited to us, one, *Parsons* v. *Birmingham Dairy Co.*, *supra*, in which Field and Cave, JJ., not expressly, but inferentially, decided that s. 14 applies to every purchaser whether purchasing with the intention of obtaining an analysis or not; the other, *Enniskillen Union* (*Guardians*) v. *Hilliard*, *supra*, in which Dowse, B., and Andrews, J., expressly dissented from that decision. I agree with the reasoning of the learned judges in the Irish case, and I entirely adopt the view of the Act expressed by them. It seems to me that to adopt the contention of the appellant in this case would be to largely restrict the operation of a salutary Act, and to exclude that class of cases of which the present is an example, where there is a contract for the delivery of provisions within the Act which may extend over a considerable period of time, and also the class of cases in which provisions are purchased from time to time in small bulk without any suspicion at the time of purchase

of any deceit being practised by the seller." But see *Rex* v. *Mahony*, quoted in note (*a*) to s. 20, *post*, p. 68.

It has been held that the provisions of this section need not be complied with in the case of a prosecution under s. 17 for refusing to sell. In the Irish case of *Clarkin* v. *McCartan* (1888), 22 Ir. L. T. 95, an inspector went into a publichouse and asked for whisky out of a particular barrel. The publican refused to serve him. The inspector never at any time said that he was an inspector, or that he wanted the whisky for analysis; but it was held by the Exchequer Division that s. 14 does not apply to prosecutions under s. 17, and that the publican was rightly convicted. It is certainly difficult to see how any other decision could possibly have been arrived at. The formalities prescribed by s. 14 are only to be observed "after the purchase shall have been completed," whereas s. 17 deals with the case of a refusal to sell, and therefore with a case in which no purchase can possibly have been completed.

It further follows, from the subjoined cases, that an officer taking a sample under s. 3 of the Act of 1879, *post*, p. 107, need not comply with the provisions of this section. In *Rouch* v. *Hall* (1880), 6 Q. B. D. 17; 45 J. P. 220; 50 L. J. M. C. 6; 29 W. R. 304, it was decided that where milk is in course of delivery, and a sample of it is procured for analysis under s. 3 of the Act of 1879 it is not necessary for the officer procuring such sample to notify to the seller or his agent his intention of having the sample analysed, or to deliver to the seller or his agent a portion of the sample in accordance with the provisions of s. 14 of the principal Act. Similarly in *Rolfe* v. *Thompson*, [1892] 2 Q. B. 196; 56 J. P. 425; 61 L. J. M. C. 184; 67 L. T. 295; 17 Cox C. C. 551, it was held that the provisions of s. 15, *post* (now repealed by the Act of 1899), need not be complied with in the case of a sample taken under s. 3 of the Act of 1879. In Scotland, in the case of *Morton* v. *Fyfe* (1896), 24 Rettie (J. C.) 9; 2 Adam, 174; 34 Sc. L. R. 55, the two cases above referred to were followed, though with great hesitation; and in *Tyler* v. *Dairy Supply Co.* (1908), 72 J. P. 132; 98 L. T. 867; 6 L. G. R. 422, A. T. LAWRENCE, J., said that he was not satisfied on the point, which, however, had not been discussed in the case. It should be noted that

where samples are taken under s. 5 of the Milk and Dairies Act, 1914, which is similar to s. 3 of the Act of 1879, the provisions as to dividing the sample must be strictly complied with. See p. 190, *post.*

This section does not apply to samples taken under s. 2 of the Act of 1907, *post*, p. 170 (*Monro* v. *Central Creamery Co., Limited*, [1912] 1 K. B. 578; 76 J. P. 131; 81 L. J. K. B. 547; 106 L. T. 114; 10 L. G. R. 134).

(*b*) **Notification of Analysis by Purchaser.**—When a sample is taken by an official purchaser for analysis the provisions of this section must be strictly complied with. Thus, in *Barnes* v. *Chipp* (1878), 3 Ex. D. 176; 47 L. J. M. C. 85; 38 L. T. 570; 26 W. R. 635, it was held that the notification required to be given by the purchaser under s. 14, viz., "that the sample had been purchased for the purpose of having it analysed by the public analyst," is a condition precedent to a prosecution under the Act. In that case a constable purchased half a pint of gin, and told the seller that he purchased it for the purpose of analysis, but did not add "by the public analyst," and there was apparently no evidence to show that the seller knew that there was to be an official analysis.

But it is not necessary, as might appear at first sight from *Barnes* v. *Chipp*, that the notification given by the purchaser should be made in the exact words of the section; nor, indeed, is it necessary that any words should be used at all so long as the seller is made unmistakably aware of what is intended. Thus, in *Wheeker* v. *Webb* (1887), 51 J. P. 661, where a seller was informed upon purchase that the article was to be examined by the "county analyst," and he knew that the county analyst was the public analyst of the district, it was held that there had been a sufficient notification under the Act. In the course of the argument, MATHEW, J., said: "You say the words 'public analyst' must be used either in speech or writing. Surely this is a superstitious adherence to form. The statute says the constable is to notify to the seller his intention to have the article analysed by the public analyst. He need not say anything if the seller knew all about what was intended"; and in delivering judgment, CAVE, J., said: ". . . no

particular form of words is required, nor even any words at all. What is necessary is that the seller must know that the samples are to be taken for the purpose of analysis so that he may see that the samples are to be fairly taken." With reference to *Barnes* v. *Chipp*, he added: "The case of *Barnes* v. *Chipp* is no authority for more than this, that the seller must know that the analysis is to be made by an official person. In that case . . . the court came to the conclusion that the seller did not know that there was to be an official analysis. That was a totally different case from this, for here the justices have found that the seller did know that there was to be an official analysis."

It is a usual, and useful, practice to print on the official label which the inspector affixes to each sample a statement that it has been bought for analysis under the Sale of Food and Drugs Acts.

(*c*) **"Forthwith."**—As to the construction of the word "forthwith" in this section, it was decided in *Parsons* v. *Birmingham Dairy Co.* (1882), 9 Q. B. D. 172; 46 J. P. 727; 51 L. J. M. C. 111; 30 W. R. 748, that notification two days after the delivery of the article is not notification "forthwith." And FIELD, J., said: "I think the intention of the Act is to strike at the moment of time at which the seller parts with the article." On the other hand, in *Somerset* v. *Miller* (1890), 54 J. P. 614, the appellant, an inspector, sent a constable in plain clothes into the respondent's inn to buy a bottle of gin. The constable, having purchased the gin, came out, and two minutes later both men went inside and told the respondent that the gin was purchased for analysis, divided it, etc. The gin was found to be thirty-seven degrees below proof. Upon a prosecution, the justices had held that the case must be dismissed on the ground that the object of the purchase had not been notified "forthwith"; but the High Court (Lord COLERIDGE, C.J., and Lord ESHER, M.R.) held without hesitation that the justices were wrong.

(*d*) **Agent.**—In *Rouch* v. *Hall*, *supra*, note (*a*), it was held that where milk was sent up to London by train, a railway porter at the terminus at which the milk arrived was not the agent of the seller for the purpose of receiving this notification.

The notification may be given to an agent who was not personally concerned in the sale (*per* Lord ALVERSTONE, C.J., and AVORY, J., *dissentiente* PICKFORD, J., in *Davies* v. *Burrell*, [1912] 2 K. B. 243; 76 J. P. 285; 81 L. J. K. B. 736; 107 L. T. 91; 23 Cox C. C. 81; 28 T. L. R. 389; 10 L. G. R. 645, where the sale was by one shop assistant and the notification given to another).

(*e*) **Notification must be Given and Analysis Made.**—The notification must be given and an analysis actually made, even if the fact of adulteration is admitted at the time of the sale. In *Smart* v. *Watts*, [1895] 1 Q. B. 219; 59 J. P. 54; 64 L. J. M. C. 89; 71 L. T. 768; 43 W. R. 379; 18 Cox C. C. 62, an inspector bought some butter at a shop. Immediately after the sale the manager of the shop admitted that the butter was in fact margarine. In consequence of this admission the inspector did not notify to him that the article was purchased for analysis, nor did he procure an analysis to be made. The High Court (WILLS and WRIGHT, JJ.) held that the notification ought to have been given and the analysis made, notwithstanding the admission, and quashed the conviction. But this would apparently not be so in the case of a purchase by a private individual. See note (*a*) to s. 20, *post*, p. 67.

(*f*) **Words Repealed.**—The words in italics and enclosed in square brackets are repealed by s. 13 of the Act of 1899, and therefore the case of *Chapell* v. *Emson* (1883), 48 J. P. 200, in which the words "offer to" were interpreted, is now useless as an authority.

(*g*) **Three Parts.**—Where a sample is taken under s. 2 of the Act of 1899, by an officer of the Local Government Board or the Board of Agriculture, the sample has to be divided into four parts (s. 2 (1) (a) of the Act of 1899), one of which parts is sent to the Board.

Each part must be sufficient to admit of its being properly analysed (*Lowery* v. *Hallard*, [1906] 1 K. B. 398; 70 J. P. 57; 75 L. J. K. B. 249; 93 L. T. 844; 54 W. R. 520; 21 Cox C. C. 73; 4 L. G. R. 189), but it is no objection that the third part, through accident, afterwards becomes unfit for analysis (*Suckling* v. *Parker*, *infra*).

(*h*) **Separation of Sample.**—The separation must be made from one undivided sample. Thus, in *Mason* v. *Cowdary*, [1900] 2 Q. B. 419; 64 J. P. 662; 69 L. J. Q. B. 667; 82 L. T. 802; 49 W. R. 28; 19 Cox C. C. 536, an inspector bought six bottles of camphorated oil and divided them into three lots of two bottles each, putting each lot into a separate bag and sealing them. He gave one lot to the seller, sent one lot for analysis, and kept the third lot. He did not open the bottles or mix or divide their contents. DARLING and BIGHAM, JJ., held that he had not satisfied the requirements of the section. But in *Smith* v. *Savage*, [1905] 2 K. B. 88; 69 J. P. 245; 74 L. J. K. B. 576; 92 L. T. 775; 53 W. R. 477; 20 Cox C. C. 847; 3 L. G. R. 582, an inspector asked for cream of tartar, and a box of small packets was produced. He asked for four packets, opened them, and poured their contents into one heap, which he divided into three parts. The justices, on the authority of *Mason* v. *Cowdary*, thought he had bought four articles, and dismissed the summons, but the High Court held that he had bought one article and had complied with the section.

In *Telford* v. *Fyfe*, [1907] Sess. Cas. (J.) 83, a milkman had a contract to supply a large amount of milk daily to a hospital, which he delivered in sixteen cans and poured them all into one large receptacle at the hospital. Before they were poured out, an inspector took a sample from each of a number of the cans, and had them analysed separately. The Court of Justiciary held that the samples ought to have been mixed before analysis.

(*i*) **Marked, Sealed or Fastened up.**—In *Suckling* v. *Parker*, [1906] 1 K. B. 527; 70 J. P. 209; 75 L. J. K. B. 302; 94 L. T. 554; 54 W. R. 438; 21 Cox C. C. 145; 4 L. G. R. 531, the third part of a sample of milk was placed in a bottle and corked, but the cork was not tied down. The milk fermented, blew the cork out, and part of the contents escaped, so that the Government analyst could not make an accurate analysis. At the trial, defendant called for the production and analysis of the third part. The High Court held that it was not a condition precedent that the third part should be analysed, but that the justices must find whether or not the third part had been "sealed or fastened up in

such manner as its nature will permit." In such cases it sometimes happens that the bottle bursts and the whole sample is lost, but, it is submitted, the result would be the same.

The sample need not necessarily be dated, and the fact that it has been marked with the wrong date is no ground for quashing a conviction if there is sufficient evidence of its identity (*Howe* v. *Knowles*, [1909] Sess. Cas. (J.) 61; 46 Sc. L. R. 881).

(*k*) **Procuring Samples by Agent or Deputy.**—An officer purchasing for analysis may employ an agent or deputy to procure samples for him, and such agent or deputy need not himself deliver the sample to the analyst, but may hand it to a third person for the purpose of such delivery. See the cases set out in note (*c*) to s. 13, *ante*, p. 48.

(*l*) **Production of Part Retained.**—The part retained by the purchaser must be produced at the hearing. See s. 21 *post*, p. 69. Failure to do so may be fatal to a conviction. See *Hutchinson* v. *Stevenson*, *post*, p. 72, and *Suckling* v. *Parker*, *ante*, p. 57.

15. *Provision when Sample is not Divided.*—[*If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate, to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.*]

This section is repealed by s. 27 of the Act of 1899.

16. *Provision for sending Article to the Analyst through the Post Office.*—If the analyst do not reside within two miles of the residence of the person

requiring the article to be analysed, such article may (*a*) be forwarded to the analyst through the post office as a [*registered letter*] (*b*) subject to any regulations (*c*) which the Postmaster-General may make in reference to the carrying and delivery of such article ; and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

(*a*) **"May."**—The word is not "must" or "shall," and, therefore, other means of conveyance may be used. The advantage of using the registered post, and thereby obtaining proof positive of the transmission of the sample, is however, obvious.

(*b*) **"Registered Letter."**—The words "registered parcel" are now substituted by s. 15 of the Act of 1899.

(*c*) **Regulations of Postmaster-General.**—The following extracts from the Post Office Guide should be noted :

There shall not be posted, or conveyed, or delivered by post any postal packet—

(3) Consisting of or containing—

(a) Any explosive substance.
(b) Any dangerous substance.
(c) Any filth.
(d) Any noxious or deleterious substance.
(g) Any article or thing whatsoever which is likely to injure other postal packets in course of conveyance, or any receptacle in which the same are conveyed, or an officer of the post office or other person who may deal with such packet.

Prohibited articles, if tendered for transmission, will be refused, or, if detected in transit, detained. They are liable to be dealt with in such manner as the Postmaster-General may direct, and the sender is in some cases liable to prosecution.

Parcels must be so packed and correspondence of every kind must be so made up as not only to preserve the contents

from loss or damage in the post, but also not to injure other correspondence.

Any letter or parcel containing anything of a fragile nature should be marked or labelled "Fragile."

Glass and crockery, liquids, butter, and other greasy substances, cheese, and other strong-smelling articles, and colouring powders, should be sent by parcel post.

They may, however, be sent by letter post under the following conditions :

1. Nothing inflammable, corrosive, or explosive, may be sent, nor anything having an odour so strong as to affect the contents of other packets in the mails.

3. They must be packed as follows :

Glass and *crockery* must be securely packed (in boxes of metal, wood, leather or cardboard) in such a way as to prevent all risk of injury to the mails or the officers of the post office.

Liquids must be inclosed in bottles, firmly sealed ; the bottles must be enclosed in a box of wood, leather or metal, and packed securely in the box by means of corrugated paper or other suitable material, a sufficient quantity of sawdust or some spongy substance being added to absorb all the liquid contents in case of the bottle being broken. Special attention must be paid to the packing round the shoulders of the bottle ; and the box must open at one end only, and have a tightly fitting lid or a screw lid if made of metal, and if made of wood a screw lid with india-rubber washer round the neck.

Semi-liquids and *greases* must have an inner covering securely closed and an outer covering of metal, wood, or leather, sufficiently strong to prevent any risk of the contents escaping during transit.

Powders must have an inner covering securely closed, and a strong outer covering of metal, wood, leather, or cardboard.

4. They are sent at the sender's risk, the Postmaster-General accepting no liability in the case of either loss or damage, even if the packets are registered.

5. If insecurely packed they will be stopped. The public are warned that such insecurely packed packets come within

the category of articles "likely to injure other postal packets in course of conveyance or an officer of the post office," and are, therefore, prohibited from being sent by post. The senders of such packets are liable to penalties under the Post Office Act, 1908, whether the packets are sent by letter or parcel post.

When articles of the classes named are sent by parcel post, the regulations as to packing given above should be substantially observed, and in any case great care should be taken that the articles are so packed as not to injure other parcels.

Any article sent by letter post which cannot from the nature of its contents be transmitted thereby is, if admissible by parcel post, transferred to that post, and treated and charged as a parcel posted out of course, *i.e.*, charged with the deficient postage at the parcel post rate together with a fine of a penny. If inadmissible by parcel post, the packet is liable to be detained and dealt with as the Postmaster-General may direct.

Articles sent for Medical Inspection or Analysis.—Deleterious liquids or substances, though otherwise prohibited from transmission by post, may be sent for medical examination or analysis by a qualified medical practitioner or qualified veterinary surgeon to a laboratory or institute, public or private, or to a medical practitioner or veterinary surgeon within the United Kingdom, by ordinary letter post, under the following conditions:

Any such liquid or substance must be inclosed in a receptacle hermetically sealed, which receptacle must itself be placed in a strong wooden, leather, or metal case in such a way that it cannot shift about, and with a sufficient quantity of some absorbent material (such as sawdust or cotton wool) so packed about the receptacle as absolutely to prevent any possible leakage from the package in the event of damage to the receptacle.

The packet so made up must be conspicuously marked "Fragile, with care," and bear the words "Pathological specimen," and also the signature and address of the medical practitioner or veterinary surgeon who sends it. The packet must on no account be sent by parcel post. Any packet of the kind found in the parcel post, or found in the

letter post not packed and marked as directed, will be at once stopped and destroyed with all its wrappings and inclosures.

Any person who sends by post a deleterious liquid or substance for medical examination or analysis otherwise than as provided by these regulations is liable to prosecution.

It is recommended that if receptacles are supplied by a laboratory or institute to medical practitioners or veterinary surgeons, they should be submitted to the Secretary, General Post Office, in order to ascertain whether they are regarded as complying with the regulations.

17. *Person Refusing to sell any Article to any Officer liable to Penalty.*—If any such officer, inspector, or constable as above described, shall apply to purchase (*a*) any article of food or any drug exposed for sale (*b*), or on sale by retail (*c*) on any premises or in any shop or stores (*d*), and shall tender (*e*) the price for the quantity (*f*) which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell (*g*) the same to such officer, inspector, or constable, such person shall be liable to a penalty (*h*) not exceeding ten pounds.

Who may Take Proceedings.—In *Connor* v. *Butler*, (1902) 2 I. R. 569, *post*, p. 137, the King's Bnech Division in Ireland held that any person, even a common informer, may take proceedings under this section.

(*a*) **Purchase by Official.**—It has been held that the provisions of s. 14 of this Act do not apply to this section. See note (*a*) to s. 14, *ante*. Note also that the offer to purchase must be made by an official, and not by a private person.

(*b*) **Demand of Inspector for Particular Supply.**—The question how far an inspector is entitled, when purchasing a sample for analysis, to demand to be supplied out of a particular receptacle in the shop is discussed, and decided up to a certain point, in *Payne* v. *Hack* (1894), 58 J. P. 165.

In that case an inspector in plain clothes was supplied by a publican with rum out of a bottle which stood on a shelf in the bar. After tasting it, the inspector asked for half-a-pint of rum. The publican thereupon was about to supply it out of another vessel, but the inspector demanded to be supplied out of the same bottle, saying that he was an inspector, and that it was for analysis. The publican refused, was summoned under this section, and convicted. The conviction was confirmed by the High Court upon a case being stated, and it was held that the publican was bound to supply the sample out of the same bottle as that from which he had originally served the inspector. The reason for this is stated by BRUCE, J. "The inspector," he said, "demanded to be supplied with a sample taken out of the same bottle. I think he was entitled to this; for, if he were not so, nothing would be easier than for the seller to keep two vessels, and supply purchasers out of one when the article was intended for consumption, and supply out of the other when the article was intended for analysis. Without, therefore, going so far as to say that an inspector is entitled to go into a shop and demand to have a sample out of any vessel he likes, I think that as he had already been supplied out of a particular bottle, he was entitled to have the sample taken from that bottle." See also *Farley* v. *Higginbotham* in note (*g*), *infra*. It is submitted that if the contents of any receptacle are in fact "exposed for sale or on sale by retail," the inspector is entitled to be served out of it.

Another point that was discussed in *Payne* v. *Hack* was the question how far an inspector is bound to show his authority. In the present instance the publican had not demanded to see his authority, and it was held that, this being so, the inspector was not bound to produce it. But KENNEDY, J., added: "I am inclined to think that if the inspector has no badge or other mark to denote his authority" (he was in plain clothes in this case), "and is unknown to the seller, and the seller demands his authority before selling the article, it would be requisite for the purchaser to show that authority before the seller could be treated under the statute as refusing to sell." The case of *Hale* v. *Cole* (1891), 55 J. P. 376, also deals with the question of a constable's authority. It was decided under a different

section (s. 13, *ante*, p. 47), and the facts were dissimilar to those in *Payne* v. *Hack*, but the two cases may well be compared.

(*c*) **Application of Section to Wholesale Dealers.**—This section applies to wholesale dealers if the article is exposed for sale. In the Irish case of *McHugh* v. *McGrath*, [1894] 2 I. R. 78; 27 Ir. L. T. 102, a farmer was selling butter wholesale at a butter market. An inspector asked him for a pound of butter for analysis, but he refused to serve him. It was proved that the custom of the market was to sell butter by the firkin and that the sellers invariably refused to break bulk, but the Queen's Bench Division in Ireland held that s. 17 applies to wholesale as well as retail sales, and that the farmer ought to be convicted.

(*d*) **"Shop or Stores."**—This provision must be read in connection with s. 5 of the amending Act of 1879, *post*, p. 114, which extends it to articles sold in any street or open place of public resort.

(*e*) **"Shall Tender."**—The money must be actually produced and offered. The mere proposal to purchase would not amount to a legal tender.

(*f*) **Quantity.**—By s. 18 of the Act of 1899, *post*, p. 151, where the article is exposed for sale in an unopened tin or packet duly labelled, the vendor need not sell it except in such unopened tin or packet.

(*g*) **Refusal to Sell.**—In *Farley* v. *Higginbotham* (1898), 42 Sol. J. 309, a policeman under the orders of an inspector asked the servant of a shopkeeper for coffee, and was supplied. On being told that it was for analysis the servant seized the coffee and upset it on the floor. The policeman asked for some more coffee out of the same tin and was refused, the shopkeeper saying that the servant had orders only to sell that coffee as coffee and chicory. WRIGHT and DARLING, JJ., held that there had been a refusal to sell, and that the shopkeeper was liable for the act of his servant.

In *Soutar* v. *Kerr*, [1907] Sess. Cas. (J.) 49; 5 Adam, 260, a milk seller was selling milk to the public out of a can, and was supplying it out of the "cran" (*i.e.*, tap or syphon). An inspector asked for a sample, and the seller offered one from

the top of the can, but refused to supply one from the "cran": —*Held*, by the Court of Justiciary, that the seller was guilty of refusing to sell under this section, but not guilty of obstructing the inspector under s. 16 of the Act of 1899.

In *French* v. *Card* (1909), 73 J. P. 389; 101 L. T. 428, the appellant was exposing for sale in the street milk which in fact was skimmed. On being asked by an inspector for a pint of new milk, he upset the can into the gutter and said, "I was not going to let you have skimmed milk for new." He had regular customers for skimmed milk, and there was no direct evidence that he was intending to sell this milk as new. It was held by the King's Bench Division that under all the circumstances there was no evidence of an exposal for sale as new milk, and that therefore he could not be convicted under this section for refusing to sell.

The judgment in the above case affords ground for the contention that the inspector is entitled to demand that the sample shall be given under the name under which it is being sold to the public, but as to this see *Sandys* v. *Small* and the other cases cited in note (*c*) to s. 6, *ante*, p. 13. The point is doubtful.

Guilty knowledge is a necessary ingredient of this offence; see the judgment of GIBSON, J., in *Taylor* v. *Nixon*, [1910] 2 I. R. 94.

It is not larceny if the seller repossesses himself of the sample and offers to return the money. Thus in *Hewson* v. *Gamble* (1892), 56 J. P. 534, an inspector bought a sample of coffee and paid for it. When the seller heard that it was bought for analysis he snatched it out of the inspector's hand and said that it was not sold as pure coffee, pointing to a label on the tin, and offered to return the money. Upon these facts HAWKINS and WILLS, JJ., held that there was no evidence of felonious intent. But the seller would now be liable to a penalty under s. 16 of the Act of 1899 for obstructing the inspector in the course of his duty.

(*h*) **Penalty**.—This cannot be increased upon a second conviction. See s. 17 of the Act of 1899, *post*, p. 150.

18. *Form of the Certificate*.—The certificate of the analysis (*a*) shall be in the form set forth in the Schedule hereto, or to the like effect (*b*).

(*a*) **Certificate.**—For the sufficiency of the certificate as evidence of the facts stated in it, see s. 21 of this Act, and s. 22 of the Act of 1899, *post*, pp. 69, 163.

(*b*) **Form of Certificate.**—See p. 99, *post*, and the cases collected in the notes to the Schedule.

19. *Quarterly Report of the Analyst.*—Every analyst appointed under any Act hereby repealed or this Act shall report (*a*) quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof; and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the Local Government Board, at such time and in such form as the Board shall direct, a certified copy of such quarterly report.

(*a*) For form of analyst's report to be sent to Local Government Board, see Appendix, *post*, p. 231, and for observations thereon see letters from the Local Government Board, dated January 1st, 1879, and December 17th, 1913, Appendix, *post*, pp. 241, 279.

PROCEEDINGS AGAINST OFFENDERS.

20. *Proceedings against Offenders.*—When the analyst, having analysed any article, shall have given his certificate (*a*) of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made (*b*) may take proceedings (*c*) for the recovery of the penalty herein imposed for such offence, before any justices in petty sessions assembled having jurisdiction in the place (*d*)

where the article or drug sold was actually delivered to the purchaser, in a summary manner.

Every penalty imposed by this Act shall be recovered in England in the manner prescribed by the eleventh and twelfth of Victoria, chapter forty-three (*e*). In Ireland such penalties and proceedings shall be recoverable, and may be taken with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

(*a*) **Certificate of Analyst.**—It seems now to be clearly settled that where an article has been purchased for the purpose of analysis the certificate of an analyst is a condition precedent to a public prosecution for adulteration; see *Peart* v. *Barstow* (1880), 44 J. P. 699, *post*, p. 101, and *Smart* v. *Watts*, *ante*, p. 50. These cases have been referred to with approval by HAWKINS, J., in *R.* v. *Smith*, *post*, p. 160. On the other hand, in the case of a private prosecution, it would appear that the certificate is not a condition precedent, for the judgment of Lord RUSSELL OF KILLOWEN, C.J., POLLOCK, B., and WRIGHT, J., in *Buckler* v. *Wilson*, *ante*, pp. 46, 52, in which the prosecutor was a private individual, contains the following passage: "The effect of s. 2[illegible] is merely to make the production of a certificate of analysis under s. 14 of itself sufficient evidence of the facts therein stated. There is nothing in the Act to prevent the proof of an offence by other satisfactory evidence; nor is it necessary that the purchaser should obtain

the certificate of the public analyst except where he purchases with an intention of submitting to analysis." In *Rex* v. *Mahony*, [1909] 2 I. R. 490, the Irish Court of King's Bench took the opposite view, pointing out that the passage above quoted was merely an *obiter dictum*, because a certificate had actually been obtained, and stating that the English court had misapprehended the judgments in *Enniskillen* v. *Hilliard*, *ante*, p. 51. But it is submitted that *Buckler* v. *Wilson*, being a considered judgment of a court of three judges, would be followed in England notwithstanding *Rex* v. *Mahony*.

(*b*) **Person causing Analysis to be made.**—The local inspector may take proceedings under this section, even though the person who actually caused the analysis to be made was an officer of a Government Department acting under the powers conferred by s. 2 of the Act of 1899 (*Connor* v. *Butler*, [1902] 2 I. R. 569, *post*, p. 137), or where the person who purchased the sample was himself a fully qualified inspector (*Tyler* v. *Dairy Supply Co.* (1908), 72 J. P. 132; 98 L. T. 867; 6 L. G. R. 422).

The words are quite general, and it is no objection that the person who caused the analysis to be made was acting under the directions of a local authority who had no power under s. 10 to appoint an analyst (*Worthington* v. *Kyme* (1905), 69 J. P. 390; 93 L. T. 546; 54 W. R. 185; 21 Cox C. C. 37; 3 L. G. R. 1098).

As to whether a prosecuting inspector must prove his appointment, see *Ross* v. *Helm*, *ante*, p. 47.

(*c*) **Proceedings against Limited Company.**—In taking proceedings against a limited company the summons must be served at the registered office of the company as provided by ss. 62 and 116 of the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), irrespective of the place where the article was purchased (*Pearks, Gunston and Tee, Limited* v. *Richardson*, [1902] 1 K. B. 91; 66 J. P. 119; 50 W. R. 286).

(*d*) **Where Prosecution may be Instituted.**—By s. 20 (5) of the Act of 1899, *post*, p. 157, a prosecution for giving a false warranty may be instituted before the court, either of the place where the warranty was given, or of the place where the article was purchased, thus overruling a contrary

decision given in *R.* v. *Smith*, [1896] 1 Q. B. 596; 60 J. P. 372; 65 L. J. M. C. 104; 74 L. T. 348; 44 W. R. 492; 18 Cox C. C. 307. And where samples are taken by one local authority at the request of another under s. 5 (4) of the Milk and Dairies Act, 1914, *post*, p. 191, the proceedings may be taken in the district of either authority.

(*e*) **Penalty, how Recovered.**—See the Summary Jurisdiction Act, 1848 (Jervis's Act). See also s. 19 of the Act of 1899, *post*, p. 151. For forms of information and summons, see pp. 285—287, *post*.

21. *Certificate of Analyst primâ facie Evidence* (*a*). *Defendant and his Wife may be examined.*—At the hearing of the information in such proceeding (*b*) the production of the certificate of the analyst shall be sufficient evidence (*c*) of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness (*d*), and the parts of the articles retained by the person who purchased the article shall be produced (*e*); and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

(*a*) **Other Provisions as to Certificates.**—Section 22 of the Act of 1899, *post*, p. 163, contains similar provisions for the production by the defendant of a certificate of analysis. Note also the provisions of s. 19 of the Act of 1899 with regard to any certificate obtained by the prosecutor, *post*, p. 152. As regards samples of milk or cream taken under the Milk and Dairies Act, 1914, special provisions are made by Sched. III. of that Act, *post*, p. 210.

(*b*) **"Such Proceeding."**—In *R.* v. *Smith*, *infra*, HAWKINS, J., seems to have held that this section applies only to proceedings under s. 20. If this is so, it would seem to follow that it does not apply to proceedings where the article was not bought for analysis. See *Buckler* v. *Wilson*, *ante*, pp. 46, 52. This view, however, has apparently never

been acted upon, and the dictum of HAWKINS, J., was not necessary for the actual decision of the case.

Apparently, the proceeding contemplated is the prosecution of the person from whom the sample was obtained, and not of the wholesale dealer from whom the retail seller obtained the article. Thus, in *Tyler* v. *Kingham and Son, Limited*, [1900] 2 Q. B. 413; 64 J. P. 598; 69 L. J. Q. B. 630; 83 L. T. 169; 19 Cox C. C. 547, a grocer, who was prosecuted for selling margarine as butter, produced a warranty from the wholesale dealer and was discharged. Proceedings were then taken against the wholesale dealer. At the trial the analyst's certificate, obtained for the purposes of the original prosecution, was offered as evidence that the article sold was really margarine. RIDLEY and BIGHAM, JJ., held that the certificate was not evidence against the wholesale dealer.

The same point appears to have been raised in *R.* v. *Smith*, [1896] 1 Q. B. 596; 60 J. P. 372; 65 L. J. M. C. 104; 74 L. T. 348; 44 W. R. 492; 18 Cox C. C. 307. The facts of the case were that Kerr, a farmer at Oakham, sold milk with a warranty to a dairy company at Finchley, who, in their turn, sold it to C., the consumer at Islington, where a sample was taken in course of delivery, and was found to be adulterated. The company were prosecuted at the Clerkenwell Police Court, and, having proved that they bought the milk with a warranty and sold it in the same state as they bought it, etc., were acquitted. A prosecution was thereupon instituted, also at Clerkenwell, against Kerr under s. 27 of the Act of 1875 for giving a false warranty. In the course of his judgment HAWKINS, J., said: "The warranty was made at Oakham, the delivery by Kerr to the dairy company at Finchley. There was no sample of the milk taken by any inspector in the course of its delivery to the dairy company, and therefore there could be no 'such' sample to analyse, and, even had there been, no analysis was made by any analyst appointed for the district of Finchley, and the analysis of a sample taken after the milk had been actually delivered to, and received by, the dairy company in a district where Kerr never had any control over the milk, and of which he had no knowledge, could not affect him, and the certificate given as the result of the analysis of 'such'

a sample could not, in our opinion, be any evidence as against Kerr." This appears to mean that even if the proceedings had been rightly instituted as regards place, nevertheless the certificate of the Clerkenwell analyst would have been no evidence against Kerr. *Tyler* v. *Kingham*, *supra*, is apparently a decision to the same effect, and if this is so, the result is that this section does not apply to proceedings for giving a false warranty, and that therefore in such proceedings the analyst must be called and give oral evidence. See also note (*m*) to s. 20 of the Act of 1899, *post*, p. 161. But this principle does not appear to extend to certificates obtained for the defence (see the preliminary note to s. 22 of the Act of 1899 *post*, p. 164).

(*c*) **Certificate, whether Conclusive.**—In *Harrison* v. *Richards* (1881), 45 J. P. 552, a milkman had been summoned for selling milk not of the nature, substance, or quality of the article demanded. The analyst's certificate was produced, but the defendant did not tender any evidence at the hearing, nor was the analyst examined. The magistrate dismissed the case on the ground that he was not satisfied that the milk had been adulterated, and thus refused to convict on the analyst's certificate, although no evidence was tendered against it. On appeal, the High Court held that as there was no evidence to contradict the certificate of the analyst, the magistrate ought to have acted on it and convicted the defendant. This case was followed in *Elder* v. *Dryden* (1908), 72 J. P. 355 ; 99 L. T. 20 ; 6 L. G. R. 786.

The opposite view appears at first sight to have been taken in the Scotch case of *Macleod* v. *O'Neil* (1882), 9 Rettie (J. C.), 32, but a careful consideration of the judgment in that case leads to the conclusion that the true ground of the decision was that the certificate of the analyst was not a proper one, and that, therefore, the sheriff was entitled to disregard it as he did. See also the cases quoted in note (*c*) to s. 22, *infra*, p. 73.

On the other hand, the analyst's certificate is not conclusive evidence of the facts as therein stated if there is evidence to meet it on the other side. In *Hewitt* v. *Taylor*, [1896] 1 Q. B. 287 ; 60 J. P. 311 ; 65 L. J. M. C. 68 ; 74 L. T. 51 ; 44 W. R. 431 ; 18 Cox C. C. 226—a milk prosecution

under s. 6 of this Act—the analyst's certificate, after setting out the constituent parts of the sample, stated that in the analyst's opinion the milk had been watered. The seller did not require the analyst to be called, but tendered himself as a witness, and gave evidence to show that the milk had not been watered. The justices, considering the whole of the facts before them, dismissed the information, and the contention before the High Court was that, the analyst not having been required to be called, the certificate was conclusive, and could not be rebutted by the evidence of the defendant. But the court declined to adopt this view, and held that the magistrates were right in deciding the case upon the whole of the evidence before them. Similar decisions have been given in Scotland in *Fyfe* v. *Hamilton* and *Todd* v. *Cochrane*, *infra*, p. 73.

In *Roberts* v. *Leeming* (1905), 69 J. P. 417; 3 L. G. R. 1031, the High Court held that an analysis of margarine made on the footing that the margarine was sold as butter is not admissible to show what the composition of margarine sold as margarine ought to be. In that case the evidence of the analysis was given verbally, but the principle seems equally applicable to a written certificate.

(*d*) **Oral Evidence of Analyst.**—It is at least doubtful whether the analyst can by his oral evidence supplement a deficiency in the written certificate. See *Hudson* v. *Bridge*, *post*, p. 101, in the notes to the Schedule.

(*e*) **Production of Third Sample.**—Failure to produce the third sample may be fatal to a conviction. In the Scotch case of *Hutchison* v. *Stevenson* (1902), 4 Fraser (J. C.), 69; 3 Adam, 651; 39 Sc. L. R. 789, at the hearing of the prosecution the defendant called for the production of the third sample in order that it might be submitted to the Government analyst. The prosecutor failed to produce it, the bottle containing it having been accidentally broken. The Court of Justiciary held that the failure to produce the sample was fatal to a conviction. But see *Suckling* v. *Parker*, *ante*, p. 57.

22. *Power to Justices to have Articles of Food and Drug Analysed.*—The justices before whom any

complaint may be made, or the court before whom any appeal may be heard, under this Act may (*a*), upon the request of either party, in their discretion cause any article of food or drug to be sent to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department at Somerset House (*b*) to make the analysis, and give a certificate (*c*) to such justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the justices may by order direct.

(*a*) **Who may Require Sample to be Sent.**—The provisions of this section are amplified by s. 21 of the Act of 1899, *post*, p. 162, which gives to either party the right to require the sample to be sent to the Government laboratory; and the justices may so send it without any previous request.

(*b*) **Government Laboratory.**—The Government laboratory has now been removed from Somerset House to Clement's Inn Passage, Strand, W.C., and its officers are now styled "Government analysts"; the chief officer being styled "The Government Chemist."

(*c*) **Certificate, whether Conclusive.**—The Act does not make the certificate conclusive, although, as a matter of practice, it naturally carries very great weight. In *Dargie* v. *Dunbar* (1884), 11 Rettie (J. C.), 37, the majority of the Court of Justiciary in Scotland appear to have held that the opinion of the Somerset House analysts (expressed in a certificate) was inadmissible as evidence of the percentage of fat which milk from a Scotch cow ought to contain, but this view would certainly not be followed by an English court. See cases cited in note (*c*) to s. 21, *ante*, p. 71.

It has been decided in Scotland that the Somerset House certificate is not conclusive if there is substantial evidence on the other side. In *Fyfe* v. *Hamilton* (1894), 1 Adam, 484, which was a milk prosecution, the district analyst certified an abstraction of 15 per cent. of fat, but another analyst, on behalf of the defendant, certified that there had been no

abstraction. The Somerset House analyst certified an abstraction of 26 per cent. The sheriff substitute acquitted the defendant, and the Court of Justiciary held that he was not bound to convict. A similar decision upon practically identical facts was given by the same court in *Todd* v. *Cochrane* (1901), 3 Adam, 357; 38 Sc. L. R. 801. It is probable that the King's Bench Division would take the same view.

23. *Appeal to Quarter Sessions.*—Any person who has been convicted of any offence punishable by any Act hereby repealed or by this Act by any justices may appeal in England to the next general or quarter sessions of the peace (*a*) [*which shall be held for the city, county, town, or place wherein such convictions shall have been made, provided that such person enter into a recognisance within three days next after such conviction, with two sufficient sureties, conditioned to try such appeal, and to be forthcoming to abide the judgment and determination of the court at such general or quarter sessions, and to pay such costs as shall be by such court awarded; and the justices before whom such conviction shall be had are hereby empowered and required to take such recognisance; and the court at such general or quarter sessions are hereby required to hear and determine the matter of such appeal, and may award such costs to the party appealing or appealed against as they or he shall think proper*].

In Ireland any person who has been convicted of any offence punishable by this Act may appeal to the next court of quarter sessions to be held in the same division of the county where the conviction shall be made by any justice or justices in any petty sessions district or to the recorder at his next sessions where the conviction shall be made by the

divisional justices in the police district of Dublin metropolis, or to the recorder of any corporate or borough town when the conviction shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within ten days from the date of any such conviction, in which case, if the appellant sees fit, the appeal may be made to the next succeeding sessions to be held for such division or town), and it shall be lawful for such court of quarter sessions or recorder (as the case may be) to decide such appeal, if made in such form and manner, and with such notices as are required by the said Petty Sessions Acts respectively hereinbefore mentioned as to appeals against orders made by justices at petty sessions, and all the provisions of the said Petty Sessions Acts respectively as to making appeals and as to executing the orders made on appeal, or the original orders where the appeals shall not be duly prosecuted, shall also apply to any appeal made under this Act.

Repeal.—The words in italics enclosed in square brackets are repealed by 47 & 48 Vict. c. 43, s. 4 (Summary Jurisdiction Act, 1884).

(*a*) **Appeals in Prosecutions by Commissioners of Customs.**—Section 1 of the Act of 1899 is to have effect "as if it were part of the Customs Consolidation Act, 1876" (which contains no right of appeal). See sub-s. (2) of that section. By the last paragraph of s. 25 of the Act of 1899 offences under that Act (unless the context otherwise requires) are to be treated as offences under the Sale of Food and Drugs Acts. Under these circumstances in *Rex* v. *Otto Monsted, Limited*, [1906] 2 K. B. 456; 70 J. P. 435; 75 L. J. K. B. 629; 95 L. T. 526; 4 L. G. R. 942, it was held by RIDLEY and DARLING, JJ. (*dissentiente* BRAY, J.), that in a prosecution

by the Commissioners of Customs under s. 1 there is no right of appeal to quarter sessions.

24. *Proof by Defendant of Exception or Provision.*—In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act (*a*), it shall be incumbent upon him to prove the same.

(*a*) See ss. 5, 6, 8, 25 of this Act; s. 6 of the Act of 1879; and s. 20 of the Act of 1899.

25. *Defendant to be Discharged if he Prove that he Bought the Article in the same state as sold, and with a Warranty* (*a*).—If the defendant in any prosecution under this Act (*b*) prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty (*c*) to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it (*d*), he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence (*e*).

(*a*) **Further Provisions.**—This section must be read in conjunction with s. 20 of the Act of 1899, *post*, p. 156, and, as regards samples of milk and cream, with Sched. III. of the Milk and Dairies Act, 1914, *post*, p. 210, which contain further provisions as to the use of a warranty as a defence.

(*b*) **Offences to which this Section Relates.**—From the actual wording of the section, it would appear, at first sight,

as though the warranty defence ought to be available in any prosecution under this Act. This, however, is clearly not so. For instance, no warranty could possibly be a defence to a prosecution for refusing to sell to an inspector; and in *Elliott* v. *Pilcher*, [1901] 2 K. B. 817; 65 J. P. 743; 70 L. J. K. B. 795; 85 L. T. 50; 20 Cox C. C. 18 (which, on this point, is not overruled by *Watts* v. *Stevens*, *post*, p. 85), BIGHAM, J., said that he did not think that the defence applied to offences under ss. 3, 4, and 9. It is suggested that the test is to see whether the wording of the section will fit the circumstances of the particular offence, or, in other words, whether there has been a sale to the prosecutor following upon a demand by him for an article of a particular nature, substance, and quality; if these essentials are not present, the wording of the section does not apply to the case. For instance, it is submitted that the warranty defence would be inapplicable to a prosecution under the first part of s. 9 for "abstracting from an article of food any part of it," because the offence is not the sale, but the abstraction; but that it might be applicable to a prosecution under the latter part of the section for "selling the article so altered." This view has received some support from the judgments in *Kelly* v. *Lonsdale*, *infra*.

There is no difficulty with regard to offences created by the Act of 1879, or by the Margarine Act, for the Act of 1879 only creates one new offence (s. 4) to which no warranty could possibly apply, while the Margarine Act has a warranty section of its own (s. 7). The case of the Act of 1899, however, is not so simple. The present section in terms applies only to offences under the Act of 1875, but at the end of s. 25 of the Act of 1899, there are the words: "An offence under this Act shall be treated as an offence under the Sale of Food and Drugs Acts." It is not easy to see what the exact effect of these words is. In *Kelly* v. *Lonsdale & Co.*, [1906] 2 K. B. 486; 70 J. P. 441; 75 L. J. K. B. 822; 95 L. T. 427; 4 L. G. R. 949, it was held that the warranty defence does not apply to a prosecution under s. 1 for importing adulterated butter. The court appear to have arrived at their decision by the test suggested above, but there are passages in the judgments which suggest that the warranty defence does not apply to the Act of 1899 at all. But in

Dairy Supply Co., Limited v. *Houghton* (1911), 76 J. P. 43, where a farmer sold milk to a company with a warranty, and the company resold to a customer with another warranty, and the company were prosecuted under s. 20 of the Act of 1899 for giving a false warranty, it was held that they were entitled to rely on the warranty given by the farmer. As regards the Act of 1907, it is suggested that the combined effect of s. 11 (2) of that Act and s. 12 of the Margarine Act is to incorporate the present section, but the fact that it was considered necessary to include special provisions as to warranties in s. 7 of the Margarine Act and s. 9 (3) of the Act of 1907 may militate against that view.

(*c*) **"Written Warranty."**—The question as to what constitutes a sufficient written warranty within the meaning of this section is by far the most difficult of any that have yet arisen under the Sale of Food and Drugs Acts. It has been discussed in a great many cases, and upon several points the mind of the courts has fluctuated, so that it is impossible to state with accuracy what the law is at the present time. It is therefore deemed advisable in this note merely to set out the cases in order of date with cross references and observations. In considering the cases the following general rules of law with regard to warranties must be borne in mind: (1) Where goods are sold by description, the buyer is entitled to treat that description as a warranty that the goods are of the quality described (see Sale of Goods Act, 1893 (57 & 58 Vict. c. 71), ss. 11 (1) and 13); (2) A warranty given after the contract of sale has been completed is generally void, for there is no consideration to support it. See *Roscorla* v. *Thomas* (1842), 3 Q. B. 234; 11 L. J. Q. B. 214.

In *Rook* v. *Hopley* (1878), L. R. 3 Ex. D. 209; 42 J. P. 551; 47 L. J. M. C. 118; 38 L. T. 649; 26 W. R. 663, which was a prosecution for selling lard containing upwards of 15 per cent. of water, the defendant proved that he sold the article in the same condition as it was when he bought it, and that when he purchased it he received an invoice in which it was described as "lard." The court held that the invoice was not a written warranty within s. 25, so as to discharge the defendant, and KELLY, C.B., said: "I cannot hold that

this invoice contains anything more than a description which cannot be deemed to be a warranty" ; while POLLOCK, B., added : "What is required by the statute is a writing expressing on the face of it that it is a warranty." It is submitted that in view of the more recent decisions these dicta would not hold good nowadays (see *Laidlaw* v. *Wilson*, *Hawkins* v. *Williams*, and *Bacon* v. *Callow Park Dairy Co.*, *infra*), from which it would appear that the invoice would now be treated as a warranty that the article sold was "lard." But it is not clear how far such a limited warranty would constitute a defence.

In *Harris* v. *May* (1883), 12 Q. B. D. 97 ; 48 J. P. 261 ; 53 L. J. M. C. 39, the appellant purchased milk under a written contract made with the farmer who supplied it, and who agreed to sell "new and pure milk each and every day for six months." The court held that this contract was not sufficient to protect him. Lord COLERIDGE, C.J., said : "It seems clear that the legislature meant that a person seeking to protect himself against the penalty, and wishing to make himself perfectly safe in respect of the sale of a specific article, must show that he had a proper specific warranty in writing in respect of the article from the vendor. The appellant has not shown that. It is possible that he may have had a parol statement, amounting to a warranty, from his vendor each morning that the milk was supplied, but that would not be sufficient." His lordship also said : "I am of opinion that the contract relied on by the appellant is not a written warranty within the meaning of the Act." This case was discussed in *Laidlow* v. *Wilson*, not followed in *Elliott* v. *Pilcher*, dissented from by Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., in *Bacon* v. *Callow Park Dairy Co.* (though this dissent was explained and modified in *Watts* v. *Stevens* and *Evans* v. *Weatheritt*), and approved by Lord ALVERSTONE, C.J., and DARLING, J., in *Watts* v. *Stevens*, *post*, p. 85.

In *Farmers', etc. Dairy Co.* v. *Stevenson* (1890), 55 J. P. 407 ; 60 L. J. M. C. 70 ; 63 L. T. 776 ; 17 Cox C. C. 201, which was a prosecution for selling milk from which cream had been abstracted, there was a written contract containing the words : "The vendor hereby warrants each and every supply of milk . . . to be pure, genuine and new milk,

unadulterated and with all its cream on," and on each of the cans delivered there was a printed label with the words, "warranted genuine new milk with all its cream on," and the magistrates found as a fact that the milk in the can was delivered in pursuance of the contract. The High Court held that the seller had a good defence under s. 25, and STEPHEN, J., said: "In the agreement there was a written warranty that the milk to be delivered was to be pure, genuine, and new milk . . . and the fact that the milk was not to be delivered all at one time does not to my mind make any difference." See *Iorns* v. *Van Tromp*, *infra*, where this case is fully discussed by CAVE, J., in his judgment.

The case of *Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181; 57 J. P. 775; 60 L. J. M. C. 146; 65 L. T. 149; 39 W. R. 607, appears, at first sight, to conflict with *Farmers', etc. Dairy Co.* v. *Stevenson*, but in *Hotchin* v. *Hindmarsh* the question of warranty was only incidentally referred to, and the true ground of the decision was that there was no evidence to show that the seller sold the article in question in the same state as when he purchased it or that he had no reason to believe that it had undergone any change. See note (*d*), *infra*.

In *Elder* v. *Smithson* (1893), 57 J. P. 809, the respondent had sold lard which was adulterated with four per cent. of beef fat. His defence was that he had bought the lard from a wholesale merchant and that it was contained in a bladder on which was printed legibly "warranted pure star brand." The court (WILLS and WRIGHT, JJ.) held that the words on the bladder did not constitute a warranty. As to this see *Rook* v. *Hopley*, *supra*, and *Lindsay* v. *Rook*, *Iorns* v. *Van Tromp*, *Hawkins* v. *Williams*, and *Lewis* v. *Weatheritt*, *infra*, and *Irving* v. *Callow Park*, *post*, p. 158.

In *Laidlaw* v. *Wilson*, [1894], 1 Q. B. 74; 63 L. J. M. C. 37; 42 W. R. 78, a grocer bought lard from a manufacturer under the following contract: "We have this day sold to you three tons Kilvert's pure lard for delivery to end of January." Two barrels of lard were forwarded under the above contract accompanied by an invoice in which they were described as "Kilvert's pure bladdered lard." A portion of this lard was sold to a customer, and turned out

to be adulterated. The court held that the grocer was protected by the contract, and CHARLES, J., said: "The respondent contends that the contract contained a written warranty that the lard should be pure. It is true that the contract does not in terms say that the purity of the lard is warranted, but, in my judgment, it is not necessary that the word 'warranted' should be actually used. To my mind it is enough if the language of the document imports a warranty, and shows an intention on the part of the vendor to warrant. It was, however, said on the part of the appellant that there were two cases which were opposed to that view. The first was *Rook* v. *Hopley* [*supra*]. But that case is distinguishable on two grounds. In the first place, the statement there was that the thing sold was lard simply; there was no statement of its purity. And secondly, the statement there, such as it was, was to be found in an invoice only. But the invoice was no part of the contract, and it is in the contract, and in the contract alone, that the warranty which the statute requires must be sought. I decide the present case upon the construction which is to be put, not upon the invoice of December 23rd, but on the contract of December 17th. The other case relied upon by the appellant was *Harris* v. *May* [*supra*], where it was held that a written contract made on March 24th, whereby one F. agreed to deliver to the defendant eighty-six gallons of pure milk every day for six months, did not constitute a written warranty in respect of a specific can of milk delivered by F. on April 12th. There, no doubt, Lord COLERIDGE, at the commencement of his judgment, said that in his opinion the contract relied on by the defendant was not a written warranty within the meaning of the Act. But on looking at his judgment as a whole, I think that what he really meant was that it was not such a warranty as would cover the specific delivery of milk on April 12th, in the absence of some written evidence that that specific delivery was made under the contract. In the present case there is evidence that the particular parcel of lard was delivered under the contract, the delivery having been accompanied by an invoice which describes the lard in the same terms as those contained in the contract. The invoice, however, is material, not as itself containing a warranty of purity, but as ear-

marking the particular parcel as having been delivered under a contract in which a written warranty of purity was contained." WRIGHT, J., said: "The word 'pure' in the contract of December 17th amounts to an agreement as an essential part of the contract that the lard supplied should be pure, and that is, in my opinion, a sufficient warranty of its purity within the meaning of the section." This case was approved in *Watts* v. *Stevens*, *post*, p. 85.

In *Lindsay* v. *Rook* (1894), 58 J. P. 735; 63 L. J. M. C. 231, the defendant bought vinegar in a cask which had upon it a printed label bearing the words "Vinegar warranted unadulterated.—Grimble & Co., Limited, Cumberland Market, London," and the cask was delivered to her along with an invoice in which it was described as "Grimble's Vinegar." She afterwards sold it by retail in exactly the same state as she had received it from the manufacturers, and it proved to have been adulterated:—*Held*, that she was entitled to the protection afforded by s. 25. The judgments are very short, but it does appear that the court held that the label in itself constituted a sufficient warranty to satisfy the section, as to which see the next case and *Lewis* v. *Weatheritt*, *infra*.

In *Iorns* v. *Van Tromp* (1895), 59 J. P. 246; 64 L. J. M. C. 171; 72 L. T. 449; 18 Cox C. C. 132, a grocer sold ground ginger adulterated with 90 per cent. of exhausted or spent ginger. He had purchased it as "ground ginger" in canisters, and had no reason to believe it otherwise than genuine, either when he purchased or retailed it. He had received from his vendor an invoice in which it was described as "ground ginger," and each canister bore a printed label, "Warranted genuine pure ground ginger":—*Held*, that neither invoice nor label, together or separately, constituted a written warranty, so as to entitle the grocer to the protection afforded by s. 25; and CAVE, J., said: "*Laidlaw* v. *Wilson* [*supra*] was referred to in the argument as being in the appellant's favour, but when the judgments are read, it is plain that it governs the present case adversely to this contention. There there was a written contract for the delivery of pure lard, and it was held that if the document relied on amounted to a warranty, it was sufficient without the word 'warrant' or 'warranty' being expressly stated

in the document. . . . Here there was no such written contract, and the justices have declined to look at the invoice as throwing light on the question of warranty, and they were perfectly right. Of course, there are some cases in which an invoice or label may be regarded in this way, as in *Farmers', etc. Dairy Co.* v. *Stevenson* [*supra*]. . . . But there there was a contract warranting the delivery of pure milk for a fixed period . . . it was not the label which contained the warranty ; all it did was to identify the milk. When there is a written warranty in the first instance, then a label such as appears on these canisters of ginger may be regarded, but not otherwise." And WRIGHT, J., said : "There must be some express individual representation in writing from the seller to the retail dealer, forming part of the contract to sell. . . . The representation . . . must be an essential term in the bargain." But see the next case, and *Bacon* v. *Callow Park* and *Lewis* v. *Weatheritt*, *post*, pp. 84, 87.

In *Hawkins* v. *Williams* (1895), 59 J. P. 533, a grocer bought butter from a wholesale merchant. At the time of the sale an invoice was handed to him by the merchant, in which the butter was described as "butter guaranteed pure average quality," and initialled by him. The butter turned out to be adulterated. The justices held that the invoice constituted a sufficient warranty to satisfy the section, and the court held that their finding was justified. Lord RUSSELL OF KILLOWEN, C.J., said : "An invoice is often used as evidence of the sale itself. Therefore, I see no reason why it should not be evidence of a warranty at the time of sale. Here the natural conclusion from the fact that the invoice bears the date of the day of purchase, and contains the words 'guaranteed pure,' followed by initials, is that the vendor was giving that document as a written warranty in pursuance of a stipulation by the purchaser for that object." The point to be noted in this case is that the invoice was dated on the day of sale, and in fact contained the terms of the contract. In the course of the argument CHARLES, J., was careful to point out that in *Laidlaw* v. *Wilson* the invoice was dated five days after the purchase. The conclusion to be drawn from this case is that an invoice may constitute a sufficient warranty if it

may be regarded as the actual contract of sale, but not otherwise. And see *Lewis* v. *Weatheritt*, *infra*.

In *Robertson* v. *Harris*, [1900] 2 Q. B. 117; 64 J. P. 565; 69 L. J. Q. B. 526; 82 L. T. 536; 48 W. R. 571; 19 Cox C. C. 495, a farmer entered into a written contract on January 20th, 1889, to sell to the defendant 1,000 gallons of milk weekly, "the milk to be pure new milk." On December 15th, 1899, one of the consignments of milk was found to be adulterated. There was nothing in writing to show that the warranty attached to this particular consignment. RIDLEY and DARLING, JJ., held, following *Harris* v. *May*, *supra*, that the defendant was not protected by the warranty unless he could produce evidence in writing to show that the particular consignment was purchased under the warranty. This decision was dissented from in the next case, but approved in *Watts* v. *Stevens*, *infra*.

In *Elliott* v. *Pilcher*, [1901] 2 K. B. 817; 65 J. P. 743; 70 L. J. K. B. 795; 85 L. T. 50; 20 Cox C. C. 18, the defendant in January, 1897, entered into a verbal contract with a firm of dairymen for a daily supply of milk. In July, 1899, the firm at the defendant's request gave him the following warranty in writing: "We hereby warrant that each and every supply of milk sent by us to you shall be new milk, unadulterated, and with all its cream." In July, 1900, a consignment of milk proved to be deficient in fat, but there was nothing in writing to show that the warranty applied to that particular consignment. BIGHAM and RIDLEY, JJ., held that the defendant was entitled to prove by oral evidence that the particular consignment was purchased under the warranty; that it was not necessary to show on the face of the warranty that it applied to the particular milk sold, but that the connection between the two might be shown by evidence; and that a specific warranty with each delivery of milk was not required. BIGHAM, J., considered that *Harris* v. *May* and *Laidlaw* v. *Wilson*, *supra*, were irreconcilable, and the court followed the latter case, and declined to follow *Harris* v. *May* and *Robertson* v. *Harris*. But in *Watts* v. *Stevens*, *infra*, the majority of the court held that *Elliot* v. *Pilcher* was wrong.

In *Bacon* v. *Callow Park Dairy Co., Limited* (1902), 66 J. P. 804; 87 L. T. 70; 18 T. L. R. 573, the defendants

entered into a verbal contract with a farmer for the purchase of a daily supply of milk, and for a written warranty to be given with each churn. The churns were accordingly labelled "Warranted pure." One of the churns turned out to be adulterated. Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that the defendants were protected by the written warranty on the churn, and Lord ALVERSTONE, C.J., said that he doubted whether, having regard to the more recent cases, *Harris* v. *May* could be regarded as law. It should be observed that this case differs from *Elder* v. *Smithson* and *Iorns* v. *Van Tromp*, in which a label was held not to be a sufficient warranty in itself, inasmuch as here there was a contract to give a warranty by the label, and therefore there was a consideration for the warranty so given. And see *Lewis* v. *Weatheritt*, *post*, p. 87.

In *Watts* v. *Stevens*, [1906] 2 K. B. 323; 70 J. P. 418; 75 L. J. K. B. 828; 95 L. T. 200; 4 L. G. R. 821, a milkman made a verbal contract with a farmer for a periodical supply of milk in or about August, 1905. On August 5th, 1905, after the making of the contract, but before the delivery of any milk thereunder, the farmer gave him the following written warranty: "I guarantee that the milk supplied by me to Mr. Stevens is perfectly pure and with all its cream as the cow gives it." On December 28th, 1905, a consignment of milk turned out to be adulterated. The justices found as a fact that the parties intended the written warranty to cover that consignment, but there was nothing in writing to connect them. The whole court held that a warranty may be good although it relates to goods not then in existence, but it was further held by Lord ALVERSTONE, C.J., and DARLING, J. (*dissentiente* RIDLEY, J.), that in the absence of any written evidence to connect the particular consignment with the warranty, the latter afforded no defence. In their judgments the majority of the court reviewed all the earlier cases on the point, approved *Harris* v. *May*, *Laidlaw* v. *Wilson*, and *Robertson* v. *Harris*, and stated that in their opinion *Elliott* v. *Pilcher* was wrong (so far as regards this question). *Watts* v. *Stevens* was distinguished in *Evans* v. *Weatheritt*, *infra*, and *Draper* v. *Newnham*, *post*, p. 88.

In *Evans* v. *Weatheritt*, [1907] 2 K. B. 80; 71 J. P. 228; 76 L. J. K. B. 628; 96 L. T. 641; 23 T. L. R. 424; 21 Cox C. C. 415: 5 L. G. R. 608, by a contract in writing, dated October 2nd, 1905, the appellant agreed to purchase from the Great Western and Metropolitan Dairies, Limited, the whole of the milk required for his dairy for twelve months. The contract contained the following clause: "All milk to be delivered by the vendors at the purchaser's address in a sweet, pure and saleable condition, and warranted by them pure with all its cream as received from the cow, but no responsibility will be taken by the vendors after delivery." On June 27th, 1906, a consignment under the contract was delivered, accompanied by a delivery note addressed to the appellant and commencing: "Please receive from the Great Western and Metropolitan Dairies, Limited," but containing no reference to the contract. The High Court, distinguishing *Watts* v. *Stevens*, held that the appellant was entitled to rely on the warranty. Lord ALVERSTONE, C.J., said: "It is not suggested that the appellant received milk from anyone but the Great Western and Metropolitan Dairies; he proved the receipt of this particular consignment from that company, and he produced the contract of October 2nd, 1905, which showed that all his milk came from that company's dairy. In my judgment that document" (*i.e.*, the contract of October 2nd) "is in these circumstances sufficient on its face to show the requisite written connection between this consignment of milk and the warranty contained in the contract." And DARLING, J., said: "In *Watts* v. *Stevens* . . . this court held that . . . it was necessary to show some connection in writing between the warranty and the particular consignment of milk in question. But the court did not say that the contract itself might not supply that necessary connection." It is not easy to understand accurately the distinction here drawn. According to DARLING and A. T. LAWRENCE, JJ., it consisted in the fact that in *Watts* v. *Stevens* the warranty was given after the contract, and that it contained nothing on its face to show that it applied to more than one consignment; but if that were the real *ratio decidendi* it is suggested that the result of *Watts* v. *Stevens* would have followed as a matter of course, and would not

have been inconsistent with *Elliott* v. *Pilcher*, and that consequently the elaborate review of earlier authorities would have been unnecessary. And if the delivery note is disregarded (as it was) it is difficult to see any real distinction between *Evans* v. *Weatheritt* and the two earlier cases of *Harris* v. *May* and *Robertson* v. *Harris* in which the opposite result followed, but which were both expressly approved in *Watts* v. *Stevens*. Evans' contract was for the supply of "the whole of the milk required for his dairy," and the contracts in the other cases did not forbid the purchaser to buy elsewhere. Lord ALVERSTONE, C.J., and DARLING, J., laid some stress on this, but where there is a contract for a periodical supply of milk and it is proved that the particular consignment was delivered by the particular contractor during the currency of the contract (as was the fact in all three cases) it is not easy to see the relevance of the fact that the purchaser might have bought elsewhere. *Evans* v. *Weatheritt* was followed in *Draper* v. *Newnham*, *post*, p. 88.

In *Rees* v. *Davis* (1908), 72 J. P. 375; 24 T. L. R. 735; 6 L. G. R. 1038, one Bainbridge sold milk to one Edwards under a warranty. Edwards resold part to the appellant under a written warranty that it was "in the same condition as when received and as warranted by Bainbridge, viz., pure new unskimmed milk." It was the practice for the appellant to go to the station and there take possession of some of the churns consigned by Bainbridge to Edwards. Each churn bore a label "Warranted pure new and unskimmed milk: G. H. Bainbridge." The magistrate thought that there was not sufficient evidence in writing to connect the warranty with each particular churn, but the High Court held that there was. Lord ALVERSTONE, C.J., also intimated that a warranty on a churn label might perhaps be sufficient if it contained the names of receiver and sender, as to which point see the next case.

In *Lewis* v. *Weatheritt* (1909), 73 J. P. 164; 100 L. T. 367; 25 T. L. R. 226; 7 L. G. R. 502, the appellant had a written contract containing a warranty with one Carter for a daily supply of milk till March 31st, 1908. Each churn had a label: "To Mr. Lewis, 1 churn, 17 gallons, pure new milk from Carter's Creamery." After March 31st, 1908, there

were negotiations as to the amount to be supplied in future, etc., but no new contract was ever entered into, and the old amount was supplied daily with the old label. The High Court held that the appellant was protected, and that after the end of the old contract there was a daily sale and on each sale a written warranty. The judgments as reported are not quite clear, but the court certainly appears to have considered that under the circumstances the label on the churn was a sufficient warranty, thus deciding the point left open in *Rees* v. *Davis*, *supra*. As to this, see *Rook* v. *Hopley*, *Elder* v. *Smithson*, *Lindsay* v. *Rook*, *Iorns* v. *Van Tromp*, and *Hawkins* v. *Williams*, *supra*, and *Irving* v. *Callow Park*, *post*, p. 158.

In *Draper* v. *Newnham* (1910), 74 J. P. 124; 102 L. T. 280; 8 L. G. R. 144, a farmer, who had supplied milk to a retailer continuously for several years, gave him the following written warranty: "I hereby guarantee and warrant that all milk supplied by me to you is of the nature, substance and quality demanded by law. And I give this warranty for the purposes of the Sale of Food and Drugs Act, 1899." The High Court, following *Evans* v. *Weatheritt*, *ante*, p. 86, and distinguishing *Watts* v. *Stevens*, *ante*, p. 85, held that there was sufficient evidence in the warranty itself to connect it with each subsequent consignment.

Limited Warranties.—In *Wilson* v. *Playle* (1903), 67 J. P. 263; 1 L. G. R. 870, which was a prosecution for selling milk containing seven per cent. of added water, the defendant relied upon a document as containing a warranty. It was in these terms: "I, A. Playle, agree to buy, and Messrs. F. and P. agree to sell, but without accepting any responsibility after delivery, about fifty-four Imperial gallons of pure milk every day up to March 31st, 1903." The milk was found to be adulterated after it had been delivered. The magistrate was of opinion that the document was a valid warranty, and afforded a defence, notwithstanding the words of limitation contained in it, and Lord ALVERSTONE, C.J., and WILLS and CHANNELL, JJ., held that he was right.

This case was followed in *Plowright* v. *Burrell*, [1913] 2 K. B. 362; 77 J. P. 245; 82 L. J. K. B. 571; 108 L. T. 1006; 23 Cox C. C. 438; 29 T. L. R. 398; 11 L. G. R. 457,

where the warranty was that the milk was "pure, genuine, new milk, with all its cream, according to the conditions of the Food and Drugs Acts," but that "no responsibility is taken by" the seller "after delivery other than under the Food and Drugs Acts." And in *Jackling* v. *Carter* (1912), 76 J. P. 292; 107 L. T. 24; 23 Cox C. C. 54; 10 L. G. R. 632, the following written warranty: "The company purchase all milk sold by them under a warranty of its purity by the farmers, and agree to put the same on rail, thoroughly well cooled over a refrigerator, and guarantee it as such up to the time of delivery," was held to be a valid warranty that the milk was pure.

By Whom Warranty must be Given.—In *Hargreaves* v. *Spackman* (1907), 72 J. P. 52; 98 L. T. 41; 24 T. L. R. 173; 21 Cox C. C. 541; 6 L. G. R. 145, it was held that in order to succeed in a defence of warranty the person relying upon it must have received it from his immediate vendor; but in the same case CHANNELL, J., intimated an opinion that if upon a resale the benefit of a warranty is assigned in writing to the purchaser he may be able to avail himself of it.

(*d*) **In the Same State as when he Purchased it.**—It should further be noted that it is not sufficient to prove a warranty. The seller must also prove that he "purchased the article as the same in nature, substance, and quality as that demanded of him by the prosecutor . . . and that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it." See *Hotchin* v. *Hindmarsh*, *ante*, p. 80, and *Jones* v. *Bertram* (1894), 58 J. P. 116. In the latter case, the magistrates upon a defence under this section had found for the defendant and dismissed the summons, but had neglected to find whether the milk was in the same state as when he received it, or not, and the High Court sent the case back to them for their decision upon the point. And in *Hennen* v. *Long* (1904), 68 J. P. 237; 90 L. T. 387; 20 Cox C. C. 608; 2 L. G. R. 437, where a milk seller who had bought milk with a warranty added boric acid to it before reselling it, the High Court held that he could not rely on the warranty as a defence, although the boric acid was not relied upon as an adulteration.

In *Sanders* v. *Sadler* (1906), 71 J. P. 3; 95 L. T. 872; 5 L. G. R. 240, a dairyman bought milk with a warranty under a contract for delivery at a railway station. A consignment of milk arrived at the station at 4.20 a.m., but was not removed till after 5 a.m. The dairyman proved that the milk was in the same state as when he removed it, but could not prove in what state it was when it arrived. The High Court held that the purchase was completed at the time of removal and not at the time of arrival, and that, therefore, the dairyman could rely on the warranty.

Hotchin v. *Hindmarsh*, *ante*, p. 80, also decided that the section affords no protection to the servant or agent of a principal who has obtained a warranty, in cases where such servant or agent is prosecuted as seller. But this decision has now been set aside by s. 20 (4) of the Act of 1899, *post*, p. 157.

(*e*) **Notice of Defence.**—The last sentence of the section, though not in terms repealed, is now inoperative, as further and more stringent provisions are substituted for it by s. 20 (1) of the Act of 1899, *post*, p. 156. As regards samples of milk and cream, see also Sched. III. (2) of the Milk and Dairies Act, 1914, *post*, p. 210.

26. *Application of Penalties.*—Every penalty imposed and recovered under this Act (*a*) shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any statute to the contrary notwithstanding; but in the case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner, and in

Ireland in the manner directed by the Fines Act, Ireland, 1851, and the Acts amending the same.

(*a*) **Extension to Margarine Act.**—The provisions of this section extend to the Margarine Act, and in the metropolis supersede s. 47 of the Metropolitan Police Courts Act, 1839. See *R.* v. *Titterton*, [1895] 2 Q. B. 61; 59 J. P. 327; 64 L. J. M. C. 202; 73 L. T. 345; 43 W. R. 603; 18 Cox C. C. 181.

Prosecutions under the Act of 1914.—Where a sample of milk or cream has been taken by a local authority under the Milk and Dairies Act, 1914, the penalty is to be paid direct to the authority; see s. 15 (6) of that Act, *post*, p. 202.

27. *Forging Certificate or Warranty; Wilful Misapplication of Warranty; False Warranty; False Label.*—[*Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanour and be punishable on conviction by imprisonment for a term of not exceeding two years with hard labour;*] (*a*)

Every person (*b*) who shall wilfully (*c*) apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty (*d*) not exceeding twenty pounds;

[*Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds;*] (*e*)

And every person (*b*) who shall wilfully (*c*) give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence

under this Act, and be liable to a penalty (*d*) not exceeding twenty pounds.

Guilty Knowledge.—In every prosecution under this section guilty knowledge must be proved (*Derbyshire* v. *Houliston*, [1897] 1 Q. B. 772; 61 J. P. 374; 66 L. J. Q. B. 569; 76 L. T. 624; 45 W. R. 527, *per* HAWKINS, J.; *Taylor* v. *Nixon*, [1910] 2 I. R. 94, *per* GIBSON, J.). See further, however, note (*p*) to s. 20 of the Act of 1899, *post*, p. 162.

Certificate of Analyst.—In *R.* v. *Smith*, [1896] 1 Q. B. 596; 60 J. P. 372; 65 L. J. M. C. 104; 74 L. T. 348; 44 W. R. 492; 18 Cox C. C. 307, HAWKINS, J., seems to have thought that in prosecutions under this section the analyst's certificate could not be used as evidence and that the analyst himself must be called. See, however, the remarks upon this case in notes (*k*) and (*m*) to s. 20 of the Act of 1899, *post*, pp. 160, 161.

(*a*) **Repeal.**—The words in italics and square brackets are repealed by s. 20 of the Forgery Act, 1913 (3 & 4 Geo. 5, c. 27). The penalty is now under ss. 3 and 4 of that Act.

(*b*) **Liability of Limited Company.**—It is submitted that a limited company can be convicted under this section, notwithstanding the word "wilfully." See *Chuter* v. *Freeth and Pocock, Limited*, and the other cases cited on p. 6.

(*c*) **"Wilfully."**—This means that the person accused "knows what he is doing and intends to do what he is doing and is a free agent" (*per* BOWEN, L.J., in *Young and Harston's Contract, In re* (1885), 31 Ch. D. 168; 50 J. P. 245; 53 L. T. 837; 34 W. R. 84.

(*d*) **Penalty.**—By s. 17 of the Act of 1899 (*post*, p. 150), the penalty may be increased to £50 on a second, and to £100 on any subsequent, conviction. The defendant may also be imprisoned in certain circumstances.

(*e*) **Repeal.**—The words in italics and square brackets are repealed by s. 27 of the Act of 1899, and re-enacted with additions by sub-s. (6) of s. 20 of the same Act (*post*, p. 157).

The cases bearing on this repealed clause are noted under s. 20 of the later Act.

28. *Proceedings by Indictment and Contracts not to be affected.*—Nothing in this Act contained shall affect the power of proceeding by indictment (*a*), or take away any other remedy against any offender under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he prove that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.

(*a*) **Proceeding by Indictment.**—For instances, see *R.* v. *Dixon* and the other cases quoted on p. 7, *ante*.

EXPENSES OF EXECUTING THE ACT.

29. *Expenses of Executing Act.*—The expenses of executing this Act shall be borne, in the city of London and the liberties thereof, by the consolidated rates raised by the Commissioners of Sewers of the

city of London and the liberties thereof, and in the rest of the metropolis by any rates or funds applicable to the purposes of the Act for the better local management of the metropolis (*a*), and otherwise as regards England, in counties by the county rate (*b*), and in boroughs by the borough fund or rate :

And as regards Ireland, in counties by the grand jury cess (*c*) and in boroughs by the borough fund or rate ; all such expenses payable in any county out of grand jury cess (*c*) shall be paid by the treasurer of such county ; and

The grand jury of any such county shall, at any assizes at which it is proved that any such expenses have been incurred or paid without previous application to presentment sessions, present to be raised off and paid by such county the moneys required to defray the same (*d*).

(*a*) The Metropolis Management Act, 1855.

(*b*) **Exceptions.**—Some quarter sessions boroughs which contribute to the general county rate are nevertheless exempt from contributing to the expenses of administering the Act in the county. See Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 152, and the note to s. 8 of the Act of 1879, *post*, p. 115.

(*c*) **"Grand Jury Cess."**—Now the county fund. See Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), s. 47 (1).

(*d*) **Grand Jury.**—This provision is obsolete, the business of the grand jury having been transferred by s. 40 of the Act above referred to, to the county councils.

Special Provisions as to Tea.

30. *Tea to be Examined by the Customs on Importation.*—[*From and after the first day of January, one thousand eight hundred and seventy-six*] (*a*) all tea

imported as merchandise into and landed at any port in Great Britain or Ireland shall be subject to examination by persons to be appointed by the Commissioners of Customs, subject to the approval of the Treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea, the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioners may direct.

(*a*) **Repeal.**—The words in italics and square brackets above from "From" down to "seventy-six" are repealed by the Statute Law Revision (No. 2) Act of 1893 (56 & 57 Vict. c. 54).

31. *Definition of "Exhausted Tea."*—Tea to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

32. *Provision for the Liberty of a Cinque Port.*—For the purposes of this Act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is

situated, and subject to the jurisdiction of the justices of such county.

33. *Application of the Act to Scotland.*—In the application of this Act to Scotland the following provisions shall have effect :

1. The term " misdemeanour " shall mean " a crime or offence " :
2. The term " defendant " shall mean " defender " and include " respondent " :
3. The term " information " shall include " complaint " :
4. This Act shall be read and construed as if for the term " justices," wherever it occurs therein the term " sheriff " were substituted :
5. The term " sheriff " shall include " sheriff substitute " :
6. The term " borough " shall mean any royal burgh and any burgh returning or contributing to return a member to Parliament :
7. The expenses of executing this Act shall be borne in Scotland, in counties, by the county general assessment, and in burghs, by the police assessment :
8. This Act shall be read and construed as if for the expression " the Local Government Board," wherever it occurs therein, the expression " one of her Majesty's Principal Secretaries of State " (*a*) were substituted :
9. All penalties provided by this Act to be recovered in a summary manner shall be recovered before the sheriff of the county in

the sheriff court, or at the option of the person (*b*) seeking to recover the same in the police court, in any place where a sheriff officiates as a police magistrate under the provisions of the Summary Procedure Act, 1864 (*c*), or of the Police Act in force for the time in any place in which a sheriff officiates as aforesaid, and all the jurisdiction, powers, and authorities necessary for this purpose are hereby conferred on sheriffs :

Every such penalty may be recovered at the instance of the procurator fiscal of the jurisdiction, or of the person (*b*) who caused the analysis to be made from which it appeared that an offence had been committed against some one of the provisions of this Act :

Every penalty imposed and recovered under this Act shall be paid to the clerk of the court, and by him shall be accounted for and paid to the treasurer of the county general assessment, or the police assessment of the burgh, as the sheriff shall direct :

10. [*Every penalty imposed by this Act may be reduced or mitigated according to the judgment of the sheriff*] (*d*).

11. It shall be competent to any person aggrieved by any conviction by a sheriff in any summary proceeding under this Act to appeal against the same [*to the next circuit court, or where there are no circuit courts*] (*d*) to the High Court of Justiciary [*at Edinburgh*] (*d*), in the manner prescribed by such of the

provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three (*e*), and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions, and restrictions contained in the said provisions.

(*a*) **Principal Secretary of State.**—Now the Local Government Board for Scotland. See the Secretary for Scotland Act, 1885 (48 & 49 Vict. c. 61), s. 5, and the Act of 1899, s. 23, *post*, p. 164.

(*b*) **Person.**—Notwithstanding s. 2 (1) of the Interpretation Act, 1889, the word "person" here does not include the corporation of a burgh, and therefore such a corporation cannot prosecute for a contravention of the Act (*Colquhoun* v. *Dumbarton Corporation*, [1907] Sess. Cas. (J.) 57; 5 Adam, 275). Apparently prosecutions ought to be in the name of the procurator fiscal or the sanitary inspector.

(*c*) Now the Summary Jurisdiction (Scotland) Act, 1908 (8 Edw. 7, c. 63).

(*d*) **Repeal.**—The words in italics and square brackets are repealed by the Statute Law Revision (No. 2) Act of 1893 (56 & 57 Vict. c. 54).

(*e*) The Heritable Jurisdictions (Scotland) Act, 1746.

34. *Interpretation of Terms in Application of Act to Ireland.*—In the application of this Act to Ireland—

The term "borough" shall mean any borough subject to the Act of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, intituled "An Act for the regulation of Municipal Corporations in Ireland" (*a*):

The term "county" shall include a county of a city and a county of a town not being a borough:

The term "assizes" shall, with respect to the county of Dublin mean "presenting term":

The term "treasurer of the county" shall include any person or persons or bank in any county performing duties analogous to those of the treasurer of the county in counties, and, with respect to the county of Dublin, it shall mean the finance committee:

The term "police constable" shall mean, with respect to the police district of Dublin Metropolis, constable of the Dublin Metropolitan Police, and with respect to any other part of Ireland, constable of the Royal Irish Constabulary.

(*a*) The Municipal Corporations (Ireland) Act, 1840.

35. *Commencement of the Act.*—[*This Act shall commence on the first day of October, one thousand eight hundred and seventy-five.*]

This section is repealed by the Statute Law Revision (No. 2) Act, 1893.

36. *Short Title.*—This Act may be cited as "The Sale of Food and Drugs Act, 1875."

SCHEDULE. Sect. 18.

Form of Certificate.

To (*a*)

I, the undersigned, public analyst for the , do hereby certify that I received on the day of 18 from (*b*) , a sample of for analysis (which then weighed (*c*)), and have analysed the same, and declare the result of my analysis to be as follows:—

I am of opinion that the same is a sample of genuine

or,

I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under.

Observations (*d*).

As witness my hand this day of .
A. B.,
at .

(*a*) Here insert the name of the person submitting the article for analysis.

(*b*) Here insert the name of the person delivering the sample.

(*c*) When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

(*d*) Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are or are not injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

Variations in Form of Certificate.—It is advisable, wherever possible, to adhere exactly to the prescribed form of certificate. The following cases show to what extent variations are permissible. It should be observed that the certificate of the analysts of the Government laboratory (see s. 22, *ante*, p. 72) need not be in the prescribed form (*Foot* v. *Findlay*, [1909] 1 K. B. 1; 72 J. P. 494; 78 L. J. K. B. 48; 99 L. T. 798; 25 T. L. R. 10; 6 L. G. R. 1129). Some suggestions for forms of certificate in particular cases will be found on p. 105. It is a usual, and useful, plan to print at the foot of each certificate the special report referred to at the end of the notes to the official form, *supra*.

Weight of Sample.—This need not be stated unless such weight is material to the accuracy of the analysis (*Sneath* v. *Taylor*, [1901] 2 K. B. 376; 65 J. P. 548; 70 L. J. K. B. 872; 49 W. R. 719; and *Hunter* v. *Wintrup* (1904), 7 Fraser (J. C.) 22; 4 Adam, 471; 42 Sc. L. R. 277).

Articles Injurious to Health.—In a prosecution under s. 3 the certificate is sufficient if it complies with the form in the

Schedule. It need not state that the article is injurious to health (*Hull* v. *Horsnell* (1904), 68 J. P. 591; 92 L. T. 81; 21 T. L. R. 32; 20 Cox C. C. 759; 2 L. G. R. 1280).

Articles Liable to Decomposition.—In *Peart* v. *Barstow* (1880), 44 J. P. 699, a case of adulteration of milk, decided at the Middlesex Quarter Sessions, the certificate did not specify whether any change had taken place in the constitution of the article to interfere with the analysis, but merely stated that "the sample was fresh when delivered, securely sealed, and marked A. 48":—*Held*, that a certificate is a condition precedent to a prosecution, that the certificate in this case was informal, and that although the analyst was called and gave evidence, there could be no conviction. This case, however, is not of binding authority. As to the question whether the certificate is a condition precedent to a prosecution, see notes to s. 20, *ante*, p. 67.

In *Hudson* v. *Bridge* (1903), 67 J. P. 186; 19 T. L. R. 369, which was a prosecution for selling vinegar of squills deficient in acetic acid, the certificate did not state whether any change had taken place in the constitution of the article. An attempt was made to cure this defect by the evidence of the analyst who was called at the trial. Acetic acid is liable to gradual decomposition if kept for a considerable time. WILLS and CHANNELL, JJ., expressed an opinion that the certificate was bad, and doubted whether the defect could be cured by the oral evidence of the analyst. The actual decision of the court, however, was based upon another point. See note (*e*) to s. 6, *ante*, p. 26.

And in *Hunter* v. *Wintrup* (1904), 7 Fraser (J. C.) 22; 4 Adam, 471; 42 Sc. L. R. 277, the Court of Justiciary held that in the case of a sample of butter the omission to state whether any change had taken place that would interfere with the analysis is fatal to a conviction.

Parts or Ingredients of Sample.—In *Bakewell* v. *Davis*, [1894] 1 Q. B. 296; 58 J. P. 228; 63 L. J. M. C. 93; 69 L. T. 832, a milk seller was charged with selling milk deficient in fat to the extent of 22 per cent. The analyst's certificate was as follows: "I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under: 22 per cent. of fat less than

the natural. Observations: the abstraction of fat is a fraud, and may possibly be injurious to health" :—*Held*, that this observation, though matter of opinion, did not invalidate the certificate (as to which see also *Gordon* v. *Love*, *post*, p. 104), and further that the certificate need not set out the constituent parts of the sample except in cases of adulteration; but it is not easy to reconcile this case with the later decisions of *Newby* v. *Sims* and *Fortune* v. *Hanson*, *infra*.

In *Newby* v. *Sims*, [1894] 1 Q. B. 478; 58 J. P. 263; 63 L. J. M. C. 228; 70 L. T. 105, the respondent was charged, under s. 6 of the Act of 1879, with selling whisky adulterated with 13 per cent. of water in excess of the proper amount. The analyst's certificate ran as follows: "I find the sample contains an excess of water over and above what is allowed by Act of Parliament. I estimate the excess of water at 13 per cent. of the entire sample. I am of opinion that the said sample is not a sample of genuine whisky." The court held that the certificate was too vague. As it stood it did not disclose any offence; for, for aught that appeared to the contrary, the analyst might not have known of the Act of 1879, which determines the amount of lawful admixture. It was impossible to tell what was the excess of water until it was known what was the quantity exceeded. The certificate ought to have stated the total amount of water found in the sample.

In *Fortune* v. *Hanson*, [1896] 1 Q. B. 202; 60 J. P. 88; 65 L. J. M. C. 71; 74 L. T. 145; 44 W. R. 431; 18 Cox C. C. 258, the prosecution was under s. 6 of this Act in respect of a sample of milk taken in the course of delivery under s. 3 of the Act of 1879. The analyst's certificate was as follows: "I am of opinion that the said sample contained the percentage of foreign ingredients as under: 5 per cent. of added water to the prejudice of the purchaser" :—*Held*, that this certificate was bad as evidence of adulteration, because it did not state the constituent parts of the sample analysed, and that in such a case as this the constituent parts ought to be stated. In the course of his judgment, HAWKINS, J., said: "If the analyst found in the milk some material substance which ought not to be found in milk at all, it would be sufficient for the certificate to state that the

sample . . . contained so much per cent. of foreign ingredient, but when the magistrates have to decide whether the sample contained . . . added water, the question becomes much more difficult, because water is to be found in milk in its most pure state . . . I think the magistrates are entitled to inquire, and the Legislature intended they should have a statement in such a case as this, of the parts of which the sample was composed. To say merely that a sample of milk contained five per cent. of added water, is only to state the analyst's own opinion that water has been added. The magistrates have to exercise their own judgment on the question . . . they ought to be informed . . . what was the total percentage of water." And KENNEDY, J., said: "Where the thing said to be added is one of the constituents of the article analysed . . . the analyst . . . must state the facts on which he has come to his conclusion sufficiently to enable the magistrates to come to a conclusion themselves."

This last-mentioned case was distinguished in *Bridge* v. *Howard*, [1897] 1 Q. B. 80; 60 J. P. 790; 65 L. J. M. C. 229; 75 L. T. 300; 45 W. R. 78; 18 Cox C. C. 421, which was also a prosecution under s. 6 of this Act. The analyst's certificate was as follows: "I am of opinion that the sample contains the parts as under: milk, 94 per cent.; added water, 6 per cent. This opinion is based on the fact that the sample contained 7·97 solids not fat, whereas genuine milk contains not less than 8·5 solids not fat":—*Held*, that the certificate was good, and KENNEDY, J., said: "What the analyst has done here has been, not only to state the percentage of added water, but also to give the scientific basis on which his conclusion rests; and, therefore, I think that . . . the certificate in this case is good . . . The certificate differs from that in *Fortune* v. *Hanson*, because it gives the reasons for the analyst's conclusion, and on the information so given the party charged can, if he thinks proper, act and the justices can form a judgment."

In *Lee* v. *Bent* and *Barlow* v. *Noblett*, [1901] 2 K. B. 290; 65 J. P. 646; 70 L. J. K. B. 747; 84 L. T. 719; 49 W. R. 684, two beer-sellers were prosecuted under s. 6 for selling beer containing arsenic, and were convicted. The analyst certified in one case that the beer "contained arsenic," and

in the other, that it contained "a serious quantity of arsenic." Lord ALVERSTONE, C.J., and LAWRENCE and PHILLIMORE, JJ., held that the certificates were not sufficient, and Lord ALVERSTONE, C.J., said: "We are all of opinion that these two certificates are not sufficient. It is very important that the practice should be uniform, and we think it is clear that the certificate of the analyst must be a document in proper form, and that that certificate ought to contain in it sufficient materials to enable the magistrates to form a judgment on those materials whether the offence charged had been committed."

In *Findlay* v. *Haas* (1903), 67 J. P. 198; 88 L. T. 465; 19 T. L. R. 353; 1 L. G. R. 377, which was a prosecution for selling watered brandy, the certificate was as follows: "I am of opinion that the sample contained the parts as under, or percentages of foreign ingredients as under. It has been reduced from 25 degrees under proof to 27·6 degrees under proof." The justices, on the authority of *Newby* v. *Sims*, *supra*, held that the certificate was not in proper form, since it did not state the percentages of pure spirit and water. But Lord ALVERSTONE, C.J., and WILLS and CHANNELL, JJ., held that the certificate disclosed an offence and was sufficient. The distinction between the cases, of course, is that here the analyst showed that he knew the provisions of s. 6 of the Act of 1879, and stated how far the sample fell below the requirements of that section.

In *Bayley* v. *Cooke* (1905), 69 J. P. 139; 92 L. T. 170; 53 W. R. 410; 20 Cox C. C. 779; 3 L. G. R. 304, the certificate stated: "Milk fat, 1·4 per cent.; deficiency in milk fat, 53·4 per cent." It did not in terms state how much fat milk should contain, but this could be arrived at by an easy calculation from the figures given. The High Court held that the certificate was good, but that the existence of the regulations of 1901 does not do away with the necessity for stating the standard, directly or impliedly, in the certificate.

Surplusage in Certificate.—Remarks in a certificate which may be regarded as mere surplusage do not invalidate it. See *Gordon* v. *Love*, [1911] S. C. (J.) 75; 48 Sc. L. R. 590, where an analysis of milk ran thus: "Solids, not fat, 7·35

per cent. ; Fat, 1·31 ; Water, 91·34 ; Total, 100·00 ; Ash, ·59 " ; and *Bakewell* v. *Davis*, *ante*, p. 101.

Suggestions for Forms of Certificate.—There is sometimes a difficulty about the form of a certificate for milk which is deficient both in fat and non-fatty solids.

The following seems unobjectionable :—

I am of opinion that the said sample contained the parts as under :—

Milk	92
Added water	8
	100

It has also been deprived of fat to the extent of 8 per cent. These opinions are based on the facts that the sample contained only 7·75 per cent. of solids not fat and 2·53 per cent. of fat, whereas genuine milk should contain at least 8·5 per cent. of solids not fat, and milk containing 8 per cent. of added water should contain at least 2·76 per cent. of fat . . . etc.

A well-known public analyst uses the following form for diluted whisky :—

. . . the parts as under :—

Whisky 25 degrees under proof . .	78
Added water	22
	100

This opinion is based on the fact that the sample was 41·5 degrees under proof. To whisky of 25 degrees under proof the above-mentioned proportion of water must be added to reduce it to 41·5 degrees under proof. Genuine whisky should not be more than 25 degrees under proof . . . etc.

The following is a typical form of certificate in the case of a drug (tincture of iodine) :—

. . . the parts as under :—

Iodine by weight	3·52
Potassium iodide by weight . .	2·70

in 100 fluid parts of the tincture.

The sample, therefore, contains excess of iodine to the extent of 40·8 per cent. and of potassium iodide to the extent of 8 per cent., since, according to the British Pharmacopœia, 1898, tincture of iodine should contain only 2·5 parts by weight of iodine and 2·5 parts by weight of potassium iodide in 100 fluid parts . . . etc.

THE SALE OF FOOD AND DRUGS ACT, AMENDMENT ACT, 1879.

(42 & 43 Vict. c. 30.)

An Act to Amend the Sale of Food and Drugs Act, 1875. [21st July 1879.]

Whereas conflicting decisions have been given in England and in Scotland in regard to the meaning and effect of section six of the Sale of Food and Drugs Act, 1875, in this Act referred to as the principal Act, and it is expedient, in this respect and otherwise, to amend the said Act :

1. *Short Title.*—This Act may be cited for all purposes as the Sale of Food and Drugs Act Amendment Act, 1879.

2. *In Sale of Adulterated Articles no Defence to Allege Purchase for Analysis.*—In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was not defective in all three respects.

This section was rendered necessary by the decision of the Court of Justiciary in Scotland, in *Davidson* v. *M'Leod* (1877), 42 J. P. 43; 5 Rettie (J. C.) 1; 3 Couper, 511, where it was held that an official purchaser, under s. 13 of the Act of 1875, buying samples for analysis and not for consumption or at his own expense, could not be prejudiced by the purchase, and that, consequently, no offence was created under s. 6 of the Act of 1875. The court also held that the words "nature, substance, and quality" in s. 6 could not be disjoined, and that it was necessary in order to secure a conviction that the article in question should be defective in all three respects. See notes to s. 6 of the Act of 1875, *ante*. Although the English courts did not follow this decision (see *Hoyle* v. *Hitchman* (1879), 4 Q. B. D. 233; 43 J. P. 431; 48 L. J. M. C. 97; 40 L. T. 252; 27 W. R. 487), the Act was thereby rendered practically inoperative in Scotland until the amending section was passed.

3. *Officer, Inspector, or Constable may Obtain a Sample of Milk* (*a*) *at the Place of Delivery to Submit to Analyst.*—Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable (*b*) under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure at the place of delivery (*c*) any sample of any milk in course of delivery (*d*) to the purchaser or consignee in pursuance of any contract (*e*) for the sale to such purchaser or consignee of such milk; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act, shall submit the same to be analysed (*f*), and the same shall be analysed, and proceedings shall be taken (*g*), and penalties on conviction be enforced in like manner in all respects, as if such officer, inspector, or con-

stable had purchased the same from the seller or consignor (*h*) under section thirteen of the principal Act.

Further Provisions.—By ss. 5 and 6 and Sched. III. of the Milk and Dairies Act, 1914, *post*, pp. 190, 194, 210, further powers of taking samples of milk and cream before delivery are conferred upon local authorities, Local Government Board inspectors, medical officers of health and their authorised deputies. Section 6 and the Schedule are stated to be an amendment of the Sale of Food and Drugs Acts, 1875 to 1907, but s. 5 is not; and except in this general way the present section is not in terms repealed or altered. There are a good many inconsistencies between the two enactments, and until the various points have been judicially determined it is impossible to say whether the earlier one co-exists with the Act of 1914, or whether it is repealed as regards milk and cream.

(*a*) **Extension to Other Articles.**—The provisions of this and the following section are now applied, by s. 14 of the Act of 1899, to every other article of food, with the proviso, however, that every sample taken under s. 14 of the Act of 1899 must be taken at the request, or with the consent, of the purchaser or consignee.

(*b*) **Who may Take Samples—Deputy.**—In *Tyler* v. *Dairy Supply Co.* (1908), 72 J. P. 132; 98 L. T. 867; 6 L. G. R. 422, the High Court held that the officials named can take samples by deputy, thus overruling the contrary decision given at quarter sessions in *Holt* v. *Morris* (1893), 57 J. P. 441. But under s. 5 (1) of the Milk and Dairies Act, 1914, *post*, p. 190, the deputy must be authorised in writing.

Private Person.—A private person cannot take a sample or proceed under this section (*Harris* v. *Williams* (1889), 6 T. L. R. 47).

Officers of Other Local Authorities.—Apparently this section can only be put in motion by the local authority within whose district the place of delivery is situated. In *McNair* v. *Cave*, [1903] 1 K. B. 24; 67 J. P. 50; 72 L. J. K. B. 26; 87 L. T. 680; 51 W. R. 112; 1 L. G. R. 28, a Derbyshire farmer was in the habit of supplying milk to a

dairy in Westminster, the place of delivery being in St. Pancras. The Westminster inspector took a sample at the place of delivery and had it analysed by the Westminster analyst. It turned out to contain 21 per cent. of added water, so proceedings were taken against the farmer. Lord ALVERSTONE, C.J., and WILLS and CHANNELL, JJ., held that the inspector had no power under the section to take samples in any place outside his own district. But under s. 5 (3) of the Milk and Dairies Act, 1914, *post*, p. 191, one local authority may require another local authority to take samples of milk or cream.

(*c*) **"Place of Delivery."**—Under certain circumstances the question what is the actual place of delivery becomes a somewhat difficult one. In *Filshie* v. *Evington*, [1892] 2 Q. B. 200; 56 J. P. 312; 66 L. T. 199; 40 W. R. 380; 17 Cox C. C. 481, a dairyman who lived at Castle Donington contracted with a dairy company under an agreement, which was contained in a printed form, for the sale to them of milk from his dairy to be delivered in London or at such other station as the purchasers might from time to time appoint. The carriage of the milk from Castle Donington was to be paid by the purchasers. The purchasers appointed Hull as a station for the delivery of milk under the contract, and the dairyman consigned milk from Castle Donington to the purchasers at Hull. Immediately upon its arrival at Hull, and before possession was taken of it by the purchasers, a sample of it was taken by an inspector, which was found to be adulterated. It was contended on behalf of the dairyman that Castle Donington, and not Hull, was the place of delivery, on the ground that there was a provision in the contract for the payment of the carriage by the purchasers between Castle Donington and Hull; but it was held that, in spite of this provision, Hull was the place of delivery within the meaning of the section. A similar decision was given in *Lusa* v. *Wilson* (1890), 54 J. P. 73, which was an appeal to quarter sessions. In that case there was a verbal agreement between a farmer and a retail milkseller that a certain quantity of milk should be delivered to the latter every day. The first deliveries were made at Basingstoke, but eventually the milk was sent on every day to Reading, the

milkseller paying the carriage from Basingstoke. A sample was taken at Reading, and a conviction was ultimately obtained, and upheld in spite of the contention that Basingstoke and not Reading was the "place of delivery." See also *McNair* v. Cave in note (*b*), *ante*.

But under s. 5 of the Milk and Dairies Act, 1914, *post*, p. 190, the sample may be taken at any time before delivery, and at any place within the area of the local authority; and under Sched. III. of that Act, *post*, p. 210, samples may, under certain circumstances, be taken anywhere "in course of transit or delivery."

(*d*) **"In Course of Delivery."**—A sample may not be taken while the article is in transit, or after delivery of the article has been completed. In *Semple* v. *Dunbar* (1904), 6 Fraser (J. C.) 65; 4 Adam, 399; 41 Sc. L. R. 858, a dairyman's servant, in the presence of an inspector, took milk from his cart in a can and passed it into empty cans belonging to the purchaser in the purchaser's shop. The inspector immediately took samples from the purchaser's cans in the presence of the dairyman's servant. The Court of Justiciary held that the milk from which the samples were taken was "in course of delivery."

In *Helliwell* v. *Haskins* (1911), 75 J. P. 435; 105 L. T. 438; 27 T. L. R. 463; 9 L. G. R. 1060, an inspector saw milk being delivered to a woman at her door by pouring it from a can into a jug which she held in her hand. She went into the house and shut the door; the inspector immediately knocked at the door, which was opened, and saw the woman still holding the jug, from which he took a sample. The justices found that delivery was complete, and therefore the sample was not taken "in course of delivery," and PICKFORD and LUSH, JJ. (*dissentiente* Lord ALVERSTONE, C.J.), held that there was evidence to support the finding, though, apparently, they themselves would have found the other way.

But see the provisions of the Milk and Dairies Act, 1914, referred to in the last paragraph of the preceding note.

(*e*) **"Contract."**—In *Phelan* v. *Rorke* (1883), 17 Ir. L. T. 649, a milkman was hawking milk from door to door. While he was pouring some milk into a customer's jug an inspector

came up and demanded a sample, which was refused. There was no evidence of any contract except as above, but the Exchequer Division held that the milk was being delivered "in pursuance of a contract," and that the milkman was rightly convicted of an offence under s. 4, *infra*.

(*f*) **Formalities to be Observed.**—As to whether, in procuring a sample under this section, it is necessary to comply with s. 14 of the Act of 1875, see the last paragraph of note (*a*) to that section, *ante*, p. 53.

By s. 10 of the Act of 1899 (*post*, p. 146), if the article sampled is milk, margarine, or margarine-cheese, a portion of the sample must be forwarded to the consignor if his name and address appear on the can or package containing the article sampled.

In *Sandys* v. *Jackson* (1905), 69 J. P. 171; 92 L. T. 646; 3 L. G. R. 285, an inspector took samples of milk at the place of delivery, saying: "I am an inspector and require to take samples from the churns," to which the milkman made no reply. The milk turned out to be adulterated, but the justices (on the authority of *Lane* v. *Collins*, *ante*, p. 23), dismissed the summons on the ground that the inspector had not asked for milk, and had got what he asked for, and the High Court upheld their decision, saying that there was not a sufficient request for milk to support an information under s. 6 of the Act of 1875. The case is briefly reported, and it does not appear that the attention of the court was directed to the Act of 1879 at all. If it is right as reported it would go far to render the present section inoperative, for it would seem to follow that if an inspector asks for milk and the milkman says: "This is skim milk," the latter must be acquitted, even though he is delivering it to his purchaser as new milk. The cases of *Kirk* v. *Coates* and *Frew* v. *Gunning* (*ante*, p. 18), which, at first sight, appear to support *Sandys* v. *Jackson*, differ from it in that the milk was not purchased in course of delivery; and the language of the judgment in *French* v. *Card*, *ante*, p. 65, although not strictly necessary to the decision, is strongly opposed to this construction of the section.

Samples, How to be Taken.—See s. 14 of the Act of 1875 and the notes thereto; s. 10 of the Act of 1899, *post*,

p. 146, and the official circulars on pp. 242, 249, 251 of the Appendix.

In *Crawford* v. *Harding*, [1907] Sess. Cas. (J.) 11 ; 5 Adam, 185, a farmer delivered to a dairyman under a contract twenty-two gallons of milk contained in two cans of eight gallons each and one of six gallons. The two eight-gallon cans and four gallons out of the third can were emptied into one vessel, and the remaining two gallons into another. The inspector took samples of the two vessels, and the two gallons turned out to contain 2·8 per cent. of fat and the twenty gallons 3·05 per cent. There was no evidence either way as to whether the six-gallon can had stood long enough for the cream to rise up and be poured into the large vessel. The Court of Justiciary held that the sample from the two gallons was not a fair sample of the contents of the six-gallon can.

In *Lamont* v. *Roger*, [1911] Sess. Cas. (J.) 24, a consignment of 42 gallons of milk was being delivered in 6 barrels of different sizes. Five samples were taken in course of delivery, viz., separate samples from four barrels and one sample from two barrels mixed. The five samples were analysed separately, and the results averaged ; and it was held that this was a fair way of sampling.

(*g*) **Proceedings.**—For forms of information and summons, see *post*, pp. 286, 287.

Separate Offences.—There can be separate informations laid in respect of samples taken from more than one can. In *Fecitt* v. *Walsh*, [1891] 2 Q. B. 304 ; 55 J. P. 726 ; 60 L. J. M. C. 143 ; 65 L. T. 82 ; 39 W. R. 525 ; 17 Cox C. C. 322, an inspector procured a sample from each of five cans in the course of delivery, and, upon its being found that there was a deficiency of cream in two of the samples submitted to analysis, laid two separate informations in respect of them :—*Held*, that the procuring of each sample was a separate transaction, and that the milkseller had committed a separate offence in respect of each can which was deficient, and that, therefore, the two informations were properly laid and that there could be two convictions.

But in *Telford* v. *Fyfe*, [1908] Sess. Cas. (J.) 83, the Court of Justiciary in Scotland strongly dissented from the above

decision. There the appellant had a contract to deliver a large amount of milk daily to a hospital, which he brought in sixteen cans and emptied them all into a large receptacle at the hospital. An inspector took samples out of fourteen of the cans, and, finding them all below the standard, charged the appellant with fourteen separate offences. It was held that the delivery of the sixteen cans was one transaction and one act, that the samples ought to have been mixed before analysis and only one offence charged. See also *Lamont* v. *Rodger, ante*, p. 112.

The judgment in *Fecitt* v. *Walsh, supra*, affords some ground for the contention that when one consignment of milk is being delivered in several receptacles it is at any rate permissible to mix all the milk together, take one sample, and lay one information.

(*h*) **Seller or Consignor.**—The person to be prosecuted is the seller or consignor himself. If the summons alleges a sale by the consignor "by the hands of A.B., his servant or agent," and it turns out that A.B. was not his servant or agent for sale but merely a carrier, there is a technical defect in the summons, but this defect being a mere variance is cured by s. 1 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) (*Hiett* v. *Ward* (1894), 58 J. P. 461; 70 L. T. 374; 10 T. L. R. 284).

4. *Penalty for Refusing to give Milk* (*a*) *for Analysis.*—The seller or consignor or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty (*b*) not exceeding ten pounds.

(*a*) **Extension to Other Articles.**—The provisions of this and the preceding section are now applied by s. 14 of the Act of 1899 (*post*, p. 148) to every other article of food, with the proviso, however, that every sample taken under s. 14 of the Act of 1899 must be taken at the request or with the consent of the purchaser or consignee.

It should be noted that under s. 11 of the Milk and Dairies Act, 1914, *post*, p. 197, any person who fails to give reasonable assistance or information to an officer desiring to take a sample is guilty of a penal offence.

(*b*) **Penalty.**—This cannot be increased upon a second conviction. See s. 17 of the Act of 1899, *post*, p. 150.

5. *Sale in Streets, etc.*—Any street or open place of public resort shall be held to come within the meaning of section seventeen of the principal Act.

See notes to s. 17 of the principal Act, *ante*, p. 62.

6. *Reduction of Spirit Allowed.*—In determining whether an offence has been committed under section six of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin.

Prior to the passing of the Act of 1879, there existed, under the principal Act, considerable diversity of practice among public analysts with respect to the strength below which they deemed spirits adulterated or unduly watered. The object of the section was to lay down fair and reasonable standards of strength, and thereby establish uniformity of practice in the application of s. 6 of the principal Act to the sale of spirits throughout the kingdom. This legislation was hastened by the decisions which were given in *Pashler* v. *Stevenitt* (1876), 41 J. P. 136; 35 L. T. 862, *ante*, p. 21), and in *Webb* v. *Knight* (1877), 2 Q. B. D. 530; 41 J. P. 726; 46 L. J. M. C. 264; 36 L. T. 791; 26 W. R. 14. This section does not prevent the seller from availing himself of any other defence that he may have. Thus if spirits are sold diluted beyond the limit allowed by this section, the seller cannot be convicted if he draws the attention of the purchaser, either verbally or by a notice, at the time of the

sale, to the extent of the dilution, since the purchaser would be held to have obtained an article of the nature, substance and quality demanded by him. See *Gage* v. *Elsey*; *Sandys* v. *Small*, and the other cases cited in note (*c*) to s. 6 of the Act of 1875, *ante*, p. 13.

Unless clear and unequivocal notice is given to the purchaser at the time of sale, the minimum imposed by this section applies to proprietary spirits sold under a special name and label just as much as to spirits sold simply as "brandy," "whisky," etc. See *Wilson* v. *McPhee and Wilson* (1903), 68 J. P. 175; 6 Fraser (J.C.) 10; 4 Adam, 310; 41 Sc. L. R. 195.

7. *Extension of Meaning of "County."*—Every liberty having a separate court of quarter sessions, except a liberty of a cinque port (*a*), shall be deemed to be a county within the meaning of the said Act.

(*a*) See s. 32 of the principal Act, *ante*, p. 95.

8. *Quarter Sessions Boroughs not to Contribute to County Analyst.*—[*The town council of any borough having a separate court of quarter sessions shall be exempt from contributing towards the expenses incurred in the execution of the principal Act in respect of the county within which such borough is situate, and the treasurer of the county shall exclude the expenses so incurred from the account required by section one hundred and seventeen of the Municipal Corporations Act*, 1835, *to be sent by him to such town council.*]

Repeal and Re-enactment.—The above section is repealed by s. 5 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), and by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56), but is in effect re-enacted by s. 152 of the former Act.

9. *Provision for Boroughs with Separate Police.*—The town council of any borough having under any

general or local Act of Parliament, or otherwise, a separate police establishment, and being liable to be assessed to the county rate of the county within which the borough is situate, shall be paid by the justices of such county (*a*) the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes and parts of parishes within such borough in respect of the rateable value of the property assessable therein, as ascertained by the valuation lists for the time being in force.

(*a*) **County Justices.**—Now the county council (Local Government Act, 1888).

10. *Special Provision as to Time for Proceedings.*—[*In all prosecutions under the principal Act, and notwithstanding the provisions of section twenty of the said Act, the summons to appear before the magistrates shall be served upon the person charged with violating the provisions of the said Act within a reasonable time, and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contravention to the terms of the principal Act the seller is rendered liable to prosecution, and particulars of the offence or offences against the said Act of which the seller is accused, and also the name of the prosecutor, shall be stated on the summons, and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned.*]

Repeal and Re-enactment.—This section is repealed by s. 27 of the Act of 1899, but re-enacted with some alterations by s. 19 of the same Act, *post*, p. 151.

THE MARGARINE ACT, 1887.

(50 & 51 Vict. c. 29.)

An Act for the better Prevention of the Fraudulent Sale of Margarine. [23rd August, 1887.]

[*Whereas it is expedient that further provision should be made for protecting the public against the sale as butter of substances made in imitation of butter, as well as of butter mixed with any such substances:*

Be it therefore enacted, etc.]

Repealed by the Statute Law Revision Act, 1908.

1. *Short Title.*—This Act may be cited as the Margarine Act, 1887.

2. *Commencement of Act.*—[*This Act shall come into operation on the first day of January one thousand eight hundred and eighty-eight.*]

Repealed by the Statute Law Revision Act, 1908.

3. *Definition.*—The word "butter" shall mean the substance usually known as butter, made exclusively from milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter.

[*The word "margarine" (a) shall mean all substances, whether compounds or otherwise, prepared in imitation of butter, and whether mixed with butter or not (b),*] and no such substance shall be lawfully sold, except under the name of margarine (c), and under the conditions set forth in this Act.

Margarine-cheese.—For definition of "cheese" and "margarine-cheese," see s. 25 of the Act of 1899, *post*, p. 165.

(*a*) **"Margarine."**—The two following cases illustrate this definition: In *Burton* v. *Mattinson* (1902), 66 J. P. 628; 86 L. T. 770, the purchaser had asked for margarine and had obtained margarine which contained 21 per cent. of water. The analyst certified that this was at least 5 per cent. more water then margarine should contain. The seller argued that by this definition the word "margarine" means all substances prepared in imitation of butter, and that this substance was an imitation of butter, and was therefore margarine; but Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that the substance sold was not margarine, but margarine and water, and that the justices had been right in convicting the seller of an offence under s. 6 of the Act of 1875. This case was followed in *Roberts* v. *Leeming* (1905), 69 J. P. 417; 3 L. G. R. 1031. In *Bayley* v. *Pearks, Gunston and Tee, Limited* (1902), 66 J. P. 790; 87 L. T. 67, Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that "Pearks' Butter" (a mixture of butter and milk) is not margarine within this definition, and therefore may be sold, notwithstanding s. 8 of the Act of 1899, *post*, p. 145, although containing more than 10 per cent. of butter fat. But the Act of 1907 now imposes special restrictions upon the sale of such substances.

"Nut cream butter," an article prepared in imitation of butter, but containing no animal fat, and unknown at the time of the passing of the Margarine Act, is "margarine" within the definition (*Wilkinson* v. *Alton* (1908), 72 J. P. 252; 99 L. T. 119; 6 L. G. R. 544).

(*b*) **Repeal.**—A new definition of margarine is substituted by s. 13 of the Act of 1907, *post*, p. 182. The old definition is not in terms repealed, but the effect is presumably the same.

(*c*) **"Under the Name of Margarine."—Fancy Names.**—This does not prevent the sale of margarine under a fancy name, provided that clear notice is given to the purchaser that the article is really margarine. Thus in *Tanner* v. *Dyball* (1906), 70 J. P. 279; 94 L. T. 539; 21 Cox C. C. 123; 4 L. G. R. 506, an inspector asked for half a pound of

"Marvo" (a form of margarine), and was served from a mass labelled "Margarine." The half-pound was wrapped in a paper labelled "Margarine," and inside the wrapper was a printed slip: "Marvo, the new butter substitute, equal in flavour to the finest dairy butter. To comply with the provisions of the Food and Drugs Acts is sold as margarine." The High Court held that no offence had been committed. This case was followed in *Keeloma Dairy Co., Limited* v. *Jones* (1906), 70 J. P. 533; 5 L. G. R. 246, where an inspector asked for half a pound of "Keeloma" (a sort of margarine). He did not see the bulk, or his parcel until it had been wrapped up. It was given him in a plain brown paper wrapper, underneath which was a second wrapper with the word "Margarine," and inside the second wrapper was a printed label: "Keeloma, the only perfect substitute for butter." Inside the shop were exhibited two notices: (1) "If you ask for butter, you will be served with one of our new butter substitutes"; (2) "Only Keeloma and Overweight, the new butter substitutes, sold here, and to comply with the Food and Drugs Acts are sold under the name of margarine." It should be noted that the summons was not taken out under the label section (s. 6, *infra*). See also *Pearks* v. *Houghton*, *ante*, pp. 16, 35.

But ss. 8—10 of the Act of 1907 impose restrictions upon the use of such fancy names.

4. *Penalty.*—Every person dealing in margarine (*a*), whether wholesale or retail, whether a manufacturer, importer, or as consignor or consignee, or as commission agent or otherwise, who is found guilty of an offence under this Act, shall be liable on summary conviction for the first offence to a fine not exceeding twenty pounds, and for the second offence to a fine not exceeding fifty pounds, and for the third or any subsequent offence to a fine not exceeding one hundred pounds (*b*).

(*a*) Or Margarine-cheese.—See s. 5 of the Act of 1899. For penalty for selling margarine containing more than 10 per cent. of butter fat, see s. 8 of the Act of 1899.

(*b*) By s. 17 of the Act of 1899 (*post*, p. 150) the offender may also be imprisoned in certain circumstances.

5. *Exemption from Penalty.*—Where an employer is charged with an offence against this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he had used due diligence to enforce the execution of this Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty.

6. *Marking of Cases.*—Every person dealing in margarine (*a*) in the manner described in the preceding section (*b*) shall conform to the following regulations :

Every package (*c*), whether open or closed, and containing margarine (*a*), shall be branded or durably marked "Margarine" (*a*) on the top, bottom, and sides, in printed capital letters, not less than three quarters of an inch square ; and if such margarine (*a*) be exposed for sale (*d*), by retail (*e*), there shall be attached to each parcel (*c*) thereof so exposed, and in such manner as to be clearly visible to the purchaser, a label (*f*) marked in printed capital letters not less than one and a half inches square, "Margarine" (*a*) ; and every person selling margarine (*a*) by retail (*e*), save in a pack-

age (*c*) duly branded or durably marked as aforesaid, shall in every case deliver the same to the purchaser in [*or with*] (*g*) a paper wrapper (*h*), on which shall be printed in capital letters, [*not less than a quarter of an inch square,*] (*i*) "Margarine" (*a*).

(*a*) Or margarine-cheese (s. 5 of the Act of 1899).

(*b*) **"The preceding Section."**—Presumably s. 4.

(*c*) **"Package."—"Parcel."**—In *McNair* v. *Horan* (1904) 68 J. P. 518; 91 L. T. 555; 20 Cox C. C. 729; 2 L. G. R. 1239, it was held that a tub of margarine standing at the back of a counter, from which margarine is scooped and supplied to customers is a "package," and must be labelled. In *Maguire* v. *Porter*, [1905] 2 I. R. 147, margarine was exposed for sale by retail in an open butt branded "Margarine" on the bottom and side, from which it was scooped as required by customers. The King's Bench Division in Ireland held that the butt was a "parcel," and that a label ought to have been attached to it. In *Parkinson* v. *McNair* (1905), 69 J. P. 399; 93 L. T. 553; 21 Cox C. C. 42; 3 L. G. R. 982, six pieces of margarine of 1 lb. each, and each partly wrapped in paper, were piled upon each other in a pyramid in a shop window. One margarine label was put upon the whole heap (on the bottom pieces). An inspector bought the top piece. The justices held that the six pieces formed one "parcel," and that that parcel was properly labelled, and the High Court refused to disturb their decision. See also *Wheat* v. *Brown*, *post*.

(*d*) **"Exposed for Sale."**—In *Crane* v. *Lawrence* (1890), 25 Q. B. D. 152; 54 J. P. 474; 59 L. J. M. C. 110; 63 L. T. 197; 38 W. R. 620, an inspector was served with a portion of margarine cut off a parcel of the substance which was lying on the counter concealed by a screen in such a manner as to be invisible to a customer in the shop. The portion so handed to the inspector was wrapped in the wrapper required by the section. The Divisional Court held that the parcel of margarine so concealed by the screen was not "exposed for sale" within the meaning of the section, and, therefore, needed no label.

In *Wheat* v. *Brown*, [1892] 1 Q. B. 418; 56 J. P. 153; 61 L. J. M. C. 94; 66 L. T. 464; 40 W. R. 462, there was a notice in a shop window advertising "Danish butter." An inspector went in and asked for some. On the counter there was a heap of paper parcels, each of which had the word "Margarine" printed on it. One of these was handed to the inspector, and was found to contain margarine. The shopkeeper was summoned for neglecting to attach to the heap the label required by the section, but the Bench dismissed the summons, holding, on the authority of *Crane* v. *Lawrence*, that the margarine being wrapped in paper, and, therefore, invisible to the purchaser, was not "exposed for sale" within the meaning of the section. The Divisional Court reversed this decision on the ground that the justices had taken an erroneous view of *Crane* v. *Lawrence*. WRIGHT, J., said: "I entirely agree with the decision in *Crane* v. *Lawrence*, which was, in effect, that there was no exposure for sale when margarine was stored in a back room or cellar. The decision is simply that margarine which cannot in any sense be seen by the purchaser is not exposed for sale. In this case, the justices refused to convict the defendant upon the ground that the second part of s. 6 does not apply to margarine which is wrapped up in paper. That, in my opinion, is a wrong view of the section. The expression 'exposed for sale' is a well-understood term, and cannot be limited so as to mean only 'exposed to view.'" See also *Parkinson* v. *McNair*, *ante*.

(*e*) **"By Retail."**—This does not apply to sales of margarine for consumption on the premises. In *Moore* v. *Pearce's Dining and Refreshment Rooms, Limited*, [1895] 2 Q. B. 657; 59 J. P. 805; 65 L. J. M. C. 7; 73 L. T. 400; 44 W. R. 94; 18 Cox C. C. 196, the proprietors of an eating-house sold to their customers slices of bread spread with a mixture of butter and margarine, and also haddocks with a piece of the mixture on each, cut from a lump of the mixture kept on the shelf. The sales were for consumption on the premises only. There were no margarine labels or wrappers on the slices or on the lump of mixture, but there were conspicuous notices hanging over the plates of slices calling attention to the composition of the mixture. The court held

that no offence had been committed under this section, and Lord RUSSELL OF KILLOWEN, C.J., said: "The question comes to this: was the case one in which margarine was exposed for sale by retail within the meaning of s. 6? In order to arrive at a conclusion as to this, one must read the concluding portion of the section. . . . That shows what the character of the sale intended to be dealt with by the section is; and it is perfectly obvious that the machinery provided by the section is inapplicable to the course of business as it is carried on at this establishment. It would be absurd to apply the provision as to using a wrapper to each separate piece of margarine when spread on the bread or used with the haddock."

Wholesale.—For wholesale sales of margarine-cheese, see s. 5 of the Act of 1899, *post*, p. 141.

(*f*) **"Label."**—By s. 6 (1) of the Act of 1899: "Where under this Act or the Margarine Act, 1887, it is required that any package containing margarine or margarine-cheese shall be branded or marked, the brand or mark shall be on the package itself and not solely on a label, ticket, or other thing attached thereto."

(*g*) **Repeal.**—The words in italics and square brackets are repealed by s. 6 (3) of the Act of 1899, and again by s. 27 of the same Act.

(*h*) **"Wrapper."**—The question has arisen as to whether the wrapper referred to must be the outside wrapper or not. In *World's Tea Co.* v. *Gardner* (1895), 59 J. P. 358, margarine was sold in wrappers duly marked "margarine," but before delivery to the purchaser a second wrapper was put on which concealed the first one. This was held (before the repeal of the words "or with") to be no infringement of the section. But in the later case of *Toler* v. *Bischop* (1895), 60 J. P. 9; 65 L. J. M. C. 4; 75 L. T. 403; 18 Cox C. C. 202, Lord RUSSELL OF KILLOWEN, C.J., and CAVE, J., although the point did not actually arise in the case, expressed a strong opinion that it is the outside wrapper which should be marked; and the judgment of Lord ALVERSTONE, C.J., in *Millard* v. *Allwood*, [1912] I K. B. 590; 76 J. P. 139; 81 L. J. K. B. 514; 106 L. T. 111;

10 L. G. R. 127, is to the same effect. See also note (*b*) to s. 8 of the Act of 1875, *ante*, p. 34. At first sight the case of *Keeloma Dairy Co., Limited* v. *Jones* (1906), 70 J. P. 533 ; 5 L. G. R. 246, seems to support the decision in *World's Tea Co.* v. *Gardner*, but the summons there was under s. 3 and not under this section, so that the point did not really arise.

Toler v. *Bischop* also shows that the word "wrapper" in the section bears a very wide meaning. In that case, a pound of margarine was sold in a cardboard box, to which a folded paper (containing an advertisement of margarine) was attached by a paper band. The word "margarine" in letters of the required size was printed partly on the box, partly on the paper, and partly on the band :—*Held*, that the box, paper and band together constituted a wrapper within the meaning of the section :—*Held*, further, that the box was not a "package" within the meaning of the first part of the section, and the court seemed to be of opinion that that part of the section does not apply to sales by retail.

(*i*) **Substituted Provision.**—The words in italics and square brackets are repealed by s. 27 of the Act of 1899 ; and s. 6 (2) of that Act, *post*, p. 142, says that the letters must be capital block letters not less than half an inch long and distinctly legible ; and provides that no other printed matter shall appear on the wrapper.

7. *Presumption against Vendor.*—Every person dealing with, selling, or exposing, or offering for sale (*a*), or having in his possession for the purpose of sale, any quantity of margarine (*b*) contrary to the provisions of this Act, shall be liable to conviction for an offence (*c*) against this Act, unless he shows to the satisfaction of the court before whom he is charged that he purchased the article in question as butter (*d*), and with a written warranty or invoice (*e*) to that effect, that he had no reason to believe at the time when he sold it that the article was other than butter (*d*), and that he sold it in the

same state as when he purchased it, and in such case he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he shall have given due notice to him that he will rely upon the above defence (*f*).

(*a*) **Offering for Sale.**—An offer to sell is not an offering for sale. In *World's Tea Co.* v. *Gardner* (1895), 59 J. P. 358, a handbill offering to every purchaser of "Kylos Creamery" (a preparation of margarine) a bonus of one pound on every two pounds purchased was held not to be an "offering for sale" although it was an offer to sell.

(*b*) Or margarine-cheese (s. 5 of the Act of 1899).

(*c*) **Guilty Knowledge.**—In *Fitzgerald* v. *Leonard* (1893), 32 L. R. Ir. 675, the Irish Queen's Bench Division held that guilty knowledge on the part of the defendant is necessary to complete an offence under the Act, and that s. 7 merely throws upon the defendant the burden of proving the absence of such guilty knowledge. But it is very improbable that this view would be taken in England. See *Betts* v. *Armstead* (1888), 20 Q. B. D. 771; 52 J. P. 471; 57 L. J. M. C. 100; 58 L. T. 811; 36 W. R. 720; 16 Cox C. C. 418, and note (*b*) to s. 6 of the Act of 1875, *ante*, p. 10.

(*d*) Or cheese (s. 5 of the Act of 1899).

(*e*) **Warranty or Invoice.**—The words "or invoice" are important. They do not occur in the corresponding section (25) of the Act of 1875, and the result is that an invoice under the Margarine Act is a defence, although it may not amount to a warranty at law. See note (*c*) to s. 25 of the Act of 1875, *ante*, p. 78. With the above exception, the notes to that section are applicable to this.

(*f*) **Further Provisions.**—The concluding sentence of this section from the words "but shall be liable" to the end, though not in terms repealed, is no longer effective, since s. 20 of the Act of 1899 (*post*, p. 156) introduces a new and far more stringent set of provisions with regard to the defence of warranty.

8. *Margarine Imported or Manufactured.*—All margarine (*a*) imported (*b*) into the United Kingdom of Great Britain and Ireland, and all margarine (*a*) whether imported or manufactured within the United Kingdom of Great Britain and Ireland, shall, whenever forwarded by any public conveyance, be duly consigned as margarine (*a*); and it shall be lawful for any officer of her Majesty's Customs or Inland Revenue, or any medical officer of health, inspector of nuisances (*c*), or police constable, authorised under section thirteen of the Sale of Food and Drugs Act, 1875, to procure samples for analysis if he shall have reason to believe that the provisions of this Act are infringed on this behalf, to examine and take samples (*d*) from any package, and ascertain, if necessary by submitting the same to be analysed, whether an offence against this Act has been committed.

(*a*) Or margarine-cheese (s. 5 of the Act of 1899).

(*b*) **Imported Margarine.**—Imported margarine or margarine-cheese must, by s. 1 of the Act of 1899, be contained in packages conspicuously marked "Margarine" or "Margarine-cheese."

(*c*) **Inspector of Weights, etc.**—Except as regards London, inspectors of weights and measures have been added to this list by s. 12 of the Act of 1907, *post*, p. 182.

(*d*) **Samples.**—See also powers given to the Commissioners of Customs, the Local Government Board, and the Board of Agriculture to take samples in certain cases (ss. 1—4 of the Act of 1899 and s. 2 of the Act of 1907). Note also that by s. 10 of the Act of 1899 a portion of the sample must be sent to the consignor.

9. *Registration of Manufactory* (*a*).—Every manufactory of margarine (*b*) within the United Kingdom

of Great Britain and Ireland shall be registered (*c*) by the owner or occupier thereof with the local authority from time to time in such manner as the Local Government Boards of England and Ireland and the Secretary for Scotland respectively may direct (*d*), and every such owner or occupier carrying on such manufacture in a manufactory not duly registered shall be guilty of an offence (*e*) under this Act.

(*a*) **Further Regulations.**—For further regulations affecting manufacturers of and dealers in margarine and margarine-cheese, see s. 7 of the Act of 1899, *post*, p. 143.

(*b*) **Extension of Section.**—This section is extended by s. 7 (4) of the Act of 1899 to any premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on, and by s. 1 (1) of the Act of 1907 to butter and milk-blended butter factories and to the premises of wholesale dealers in milk-blended butter.

(*c*) **Notification of Registration.**—The registration must be forthwith notified to the Board of Agriculture by the local authority (s. 7 (5) of the Act of 1899).

(*d*) **Order of Local Government Board.**—For the manner of registration and the necessary forms, see Orders of the Local Government Board dated December 22nd, 1887, February 26th, 1900, and December 28th, 1907, in the Appendix, *post*, pp. 215, 218, 221.

(*e*) **New Offences.**—Section 7 (3) of the Act of 1899, *post*, p. 143, creates five new offences.

10. *Power to Inspectors to take Samples without Purchase.*—Any officer (*a*) authorised to take samples under the Sale of Food and Drugs Act, 1875, may, without going through the form of purchase provided by that Act, but otherwise acting in all respects in accordance with the provisions of the

said Act as to dealing with samples, take for the purposes of analysis samples of any butter (*b*), or substances purporting to be butter (*b*), which are exposed for sale, and are not marked Margarine (*c*), as provided by this Act; and any such substance not being so marked shall be presumed to be exposed for sale as butter (*b*).

(*a*) **Officers authorised to take Samples.**—The powers given to "officers" under this section are extended by ss. 1, 2, and 3 of the Act of 1889 to officers of the Commissioners of Customs, the Local Government Board, and the Board of Agriculture.

(*b*) Or cheese (s. 5 of the Act of 1899).

(*c*) Or margarine-cheese (s. 5 of the Act of 1899).

11. *Appropriation of Penalties.*—Any part of any penalty recovered under this Act may, if the court shall so direct (*a*), be paid to the person who proceeds for the same, to reimburse him for the legal costs of obtaining the analysis, and any other reasonable expenses to which the court shall consider him entitled.

(*a*) **Payment of Penalty.**—In the absence of any direction by the court, the penalty is to be paid to the officer of the local authority prosecuting, and not to the police. See *R.* v. *Titterton*, [1895] 2 Q. B. 61; 59 J. P. 327; 64 L. J. M. C. 202; 73 L. T. 345; 43 W. R. 603; 18 Cox C. C. 181.

12. *Proceedings.*—All proceedings under this Act shall, save as expressly varied by this Act, be the same as prescribed by sections twelve to twenty-eight inclusive of the Sale of Food and Drugs Act, 1875, and all officers employed under that Act are hereby empowered and required to carry out the provisions of this Act.

13. *Definition of Local Authority.*—The expression "local authority" shall mean any local authority authorised to appoint a public analyst under the Sale of Food and Drugs Act, 1875 (*a*).

(*a*) See ss. 10 and 11 of the Act of 1875, *ante*, pp. 43 and 45.

THE SALE OF FOOD AND DRUGS ACT, 1899.

(62 & 63 Vict. c. 51.)

An Act to Amend the Law relating to the Sale of Food and Drugs. [9th August, 1899.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Precautions against Importation of Agricultural and other Produce Insufficiently Marked.*—(1) If there is imported into the United Kingdom any of the following articles, namely :

(a) margarine or margarine-cheese, except in packages conspicuously marked (*a*) "Margarine" or "Margarine-cheese," as the case may require ; or

(b) [*adulterated or impoverished butter* (*other than margarine*) *or*] (*b*) adulterated or impoverished milk or cream, except in packages or cans conspicuously marked with a name or description indicating that the [*butter or*] (*b*) milk or cream has been so treated ; or

(c) condensed separated or skimmed milk, except in tins or other receptacles which bear a label (*c*) whereon the words "Machine-skimmed Milk" or "Skimmed Milk," as the

case may require, are printed in large and legible type ; or

(d) any adulterated or impoverished article of food to which her Majesty may by Order in Council direct that this section shall be applied, unless the same be imported in packages or receptacles conspicuously marked (*a*) with a name or description indicating that the article has been so treated.

[N.B.—*The following five articles have been added to this list by s. 5 of the Act of* 1907, *viz. :*

(e) Butter containing more than sixteen per cent. of water :

(f) Margarine containing more than sixteen per cent. of water, or more than ten per cent. of butter fat ;

(g) Milk-blended butter containing more than twenty-four per cent. of water ;

(h) Milk-blended butter, except in packages conspicuously marked with such name as may be approved by the Board of Agriculture and Fisheries for the purpose (*d*) ;

(j) Butter, margarine, or milk-blended butter which contains a preservative prohibited by any regulation made under this Act, or an amount of a preservative in excess of the limit allowed by any such regulation (*e*)] ;

the importer shall be liable (*f*), on summary conviction, for the first offence to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds (*g*).

(2) The word "importer" shall include any

person who, whether as owner, consignor, or consignee, agent, or broker, is in possession of, or in anywise entitled to the custody or control of, the article ; prosecutions for offences under this section shall be undertaken by the Commissioners of Customs ; and subject to the provisions of this Act this section shall have effect as if it were part of the Customs Consolidation Act, 1876 (*h*).

(3) The Commissioners of Customs shall, in accordance with directions given by the Treasury after consultation with the Board of Agriculture, take such samples of consignments of imported articles of food as may be necessary for the enforcement of the foregoing provisions of this section.

(4) Where the Commissioners of Customs take a sample of any consignment in pursuance of such directions they shall divide it into not less than three parts, and send one part to the importer and one part to the principal chemist of the Government laboratories (*i*), and retain one part.

(5) In any proceeding under this section the certificate of the principal chemist (*k*) of the result of the analysis shall be sufficient evidence (*l*) of the facts therein stated, unless the defendant require that the person who made the analysis be called as a witness (*m*).

(6) If, in any case, the Commissioners of Customs are of opinion that an offence against this section has been committed, they shall communicate to the Board of Agriculture for their information the name of the importer and such other facts as they possess or may obtain as to the destination of the consignment.

(7) For the purposes of this section an article of

food shall be deemed to be adulterated or impoverished if it has been mixed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance, or nature.

Provided that an article of food shall not be deemed to be adulterated by reason only of the addition of any preservative or colouring matter of such a nature and in such a quantity as not to render the article injurious to health (*n*).

This section has been considerably extended by s. 5 of the Act of 1907, *post*, p. 174.

Enforcement of Provisions.—The important point to be noted in connection with this section is that its provisions are enforceable not by the local authority, or private individuals, as in the case of prosecutions under the previous Acts, but by the Commissioners of Customs, and by them alone. This distinguishes it from provisions in the Margarine Act which are similar in other respects. Thus, under s. 6. of that Act, an importer of margarine is liable to a prosecution by the local authority if the packages containing the margarine are not marked in a particular way, while under s. 8 of the same Act the Commissioners of Customs have power to take samples where they have reason to suspect that the Margarine Act has been infringed (*cf.* also s. 30 of the Act of 1875). Now the Commissioners of Customs have not only power to take samples, but they may also prosecute if an offence against this section has been committed; and further, their power to take samples is considerably widened (sub-s. (3)), and they may prosecute in respect of any of the articles mentioned in the section.

Definitions.—For definition of "Butter," see s. 3 of the Margarine Act, *ante*, p. 117. "Margarine" is defined in s. 13 of the Act of 1907, *post*, p. 182. "Margarine-cheese" in s. 25 of this Act, *post*, p. 165; "Food" in s. 26, *post*, p. 165; "Importer" in sub-s. (2) of this section, *supra*, and "adulterated or impoverished" in sub-s. (7), *supra*.

(*a*) **"Conspicuously Marked."**—The mark must be on the package itself (see s. 6 (1) of this Act, *post*, p. 142). Note, however, that this provision applies only to packages containing margarine or margarine-cheese, and that therefore packages containing any of the other articles to which this section applies need only be "conspicuously marked."

(*b*) **Repeal.**—The words in square brackets are repealed by s. 5 (1) of the Act of 1907.

(*c*) **Label.**—In this one instance a label is sufficient and the receptacle itself need not be marked.

(*d*) **Names for Milk-blended Butter.**—See s. 9 of the Act of 1907, *post*, p. 178.

(*e*) **Regulations as to Preservatives.**—See s. 7 of the Act of 1907, *post*, p. 177.

(*f*) **Defence of Warranty.**—A warranty is no defence to a prosecution under this section, though it is relevant on the question of penalty (*Kelly* v. *Lonsdale & Co.*, [1906] 2 K. B. 486; 70 J. P. 441; 75 L. J. K. B. 822; 95 L. T. 427; 4 L. G. R. 949).

(*g*) **Penalty.**—By s. 17 (2), *post*, p. 150, the offender may also be imprisoned.

And, by s. 5 (2) of the Act of 1907, *post*, p. 175, the Commissioners may elect to demand a fine equal to the value of the goods.

(*h*) **Appeals.**—The Customs Consolidation Act, 1876, gives no right of appeal to quarter sessions, and therefore, notwithstanding the last paragraph of s. 25, *post*, p. 165, there is no appeal from convictions under this section (*Rex* v. *Otto Monsted, Limited*, [1906] 2 K. B. 456; 70 J. P. 435; 75 L. J. K. B. 629; 95 L. T. 526; 4 L. G. R. 942).

(*i*) **Analysis of Sample.**—Note that this is to be made by the Government, and not by the county or borough analysts.

(*k*) **Certificate of Principal Chemist.**—This need not be in the form prescribed by the Act of 1875 (*Foot* v. *Findlay*, [1909] 1 K. B. 1; 72 J. P. 494; 78 L. J. K. B. 48; 99 L. T. 798; 25 T. L. R. 10; 6 L. G. R. 1129).

The certificate is *primâ facie* evidence (see s. 5 (3) of the

Act of 175, *post*, p. 1907, which also makes provision for calling the principal chemist to give oral evidence).

The certificate must be forthwith notified to the importer (s. 5 (4) of the Act of 1907).

(*l*) **"Sufficient Evidence."**—*Cf.* s. 21 of the Act of 1875, *ante*, p. 69, and the cases cited thereunder.

By s. 5 (3) of the Act of 1907, *post*, p. 175, the certificate raises a presumption till the contrary is proved.

Evidence for Defence.—The certificate of any public analyst may be used by the defendant in his defence. See s. 22, *post*, p. 163.

(*m*) **Calling Analyst as Witness.**—By s. 5 (3) of the Act of 1907, *post*, p. 175, the defendant must give three clear days' notice, and deposit a sum for the analyst's expenses.

(*n*) **"Injurious to Health."**—*Cf.* note (*a*) to s. 3 of the Act of 1875, *ante*, p. 6.

2. *Power for Local Government Board or Board of Agriculture to Sample Articles of Food.*—(1) The Local Government Board may, in relation to any matter appearing to that Board to affect the general interest of the consumer, and the Board of Agriculture may, in relation to any matter appearing to that Board to affect the general interests of agriculture in the United Kingdom, direct an officer of the Board to procure for analysis samples of any article of food, and thereupon the officer shall have all the powers of procuring samples conferred by the Sale of Food and Drugs Acts (*a*), and those Acts shall apply as if the officer were an officer authorised to procure samples under the Sale of Food and Drugs Act, 1875, except that—

(a) the officer procuring the sample shall (*b*) divide the same into four parts, and shall deal with three of such parts in the manner

directed by section fourteen of the Sale of Food and Drugs Act, 1875 (*c*), as amended by this Act (*d*), and shall send the fourth part to the Board; and

(b) the fee for analysis (*e*) shall be payable to the analyst by the local authority of the place where the sample is procured.

(2) The Board shall communicate the result of the analysis of any such sample to the local authority, and thereupon there shall be the like duty and power (*f*) on the part of the local authority to cause proceedings (*g*) to be taken as if the local authority had caused the analysis to be made.

Effect of Section.—The practical effect of this and the succeeding section is to give the Local Government Board and the Board of Agriculture a roving commission to see that the Acts are properly enforced throughout the kingdom. Prior to the passing of this Act, as the report of the Select Committee showed, the Acts were properly enforced in some districts and disregarded in others. The object of the legislature has evidently been to remove these differences as far as possible. See also notes (*a*) and (*b*) to s. 3, *infra*.

Special powers of taking samples of milk are conferred upon the Local Government Board by s. 5 of the Milk and Dairies Act, 1914, *post*, p. 190.

(*a*) **Power to Procure Samples.**—See s. 13 of the Act of 1875, s. 3 of the Act of 1879, and s. 10 of the Margarine Act, *ante*, pp. 47, 107, 127, and s. 14 of this Act, *post*, p. 148.

(*b*) **Special Procedure, whether Compulsory.**—It has been held in Scotland that the officer of the Board need not follow this special procedure unless he desires to impose the cost of proceedings upon the local authority. In *Falconer* v. *Whyte*, [1908] Sess. Cas. (J.) 40, the Irish Department of Agriculture (see s. 24, *infra*) sent their officer to Glasgow to obtain samples of Irish produce, and take proceedings where necessary. In taking samples he followed the procedure

of s. 14 of the Act of 1875, and not that of this section. The Court of Justiciary held that he was entitled to do so; that the object of this and the next section is to enable Government Departments to take proceedings at the expense of the local authority; that these sections do not take away their right, if they choose to do so at their own expense, of instructing their officers to take proceedings under the Act of 1875 as private individuals.

(*c*) *Ante*, p. 51.

(*d*) See s. 13, *post*, p. 148.

(*e*) **Fee for Analysis.**—See ss. 12 and 13 of the Act of 1875, *ante*, pp. 46, 47.

(*f*) **Power of Local Authority.**—See s. 20 of the Act of 1875, *ante*, p. 66. The only "duty" cast upon a local authority to take proceedings is that created by s. 3 (1), *infra*.

(*g*) **Proceedings by Local Authority.**—In *Connor* v. *Butler*, [1902] 2 I. R. 569, the defendant was prosecuted by a local inspector, (1) under s. 17 of the Act of 1875, for refusing to sell to an officer of the Irish Agricultural Department; (2) under s. 6 of the Margarine Act, for exposing for sale unmarked margarine; and (3) under the same section, for selling margarine without a wrapper to the officer of the Agricultural Department. The facts were that an officer of the Irish Agricultural Department took a sample on November 12th, and caused it to be analysed. On December 4th the result of the analysis was communicated to the secretary of the local authority, who handed the certificate to the local inspector. The latter took out a summons on December 6th without any special authorisation from the local authority, whose next meeting was not until December 9th. At that meeting the inspector's action was approved. The magistrates dismissed the summons on the grounds that the local inspector was not entitled to prosecute, because he had not "caused the analysis to be made" (s. 20 of the Act of 1875, *ante*, p. 66), and because he was acting without authority. But the King's Bench Division in Ireland held that the magistrates were wrong. Upon the summons for refusing to sell they held that any person, even a common

informer, is entitled to take proceedings for that offence. Upon the other two summonses, they held that the local inspector was entitled to take proceedings, notwithstanding the fact that he was not the person who had actually caused the analysis to be made, by reason of sub-s. (2) of this section; and, further, that the fact that he had had no special authorisation to act was immaterial, and Lord O'BRIEN, C.J., said: "I think that the function of the local authority is adequately discharged if their secretary when he receives the certificate hands that document to the officer charged with the execution of the Act to proceed thereon in his own name." MADDEN and KENNY, JJ., expressed the opinion that the subsequent ratification by the local authority of their inspector's action was wholly unnecessary.

3. *Power for Local Government Board or Board of Agriculture to act in default of Local Authority.*—(1) It shall be the duty (*a*) of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst, and put in force from time to time, as occasion may arise, the powers with which they are invested, so as to provide proper securities for the sale of food and drugs in a pure and genuine condition, and in particular to direct their officers to take samples for analysis.

(2) If the Local Government Board or Board of Agriculture, after communication with a local authority, are of opinion that the local authority have failed to execute or enforce any of the provisions of the Sale of Food and Drugs Acts in relation to any article of food, and that their failure affects the general interest of the consumer or the general interest of agriculture in the United Kingdom, as the case may be, the Board concerned may (*b*), by order, empower an officer of the Board to execute

and enforce those provisions or to procure the execution and enforcement thereof in relation to any article of food mentioned in the order.

(3) The expenses incurred by the Board or their officer under any such order shall be treated as expenses incurred by the local authority in the execution of the said Acts, and shall be paid by the local authority to the Board on demand, and in default the Board may recover the amount of the expenses with costs from the local authority.

(4) For the purposes of this section an order of the Board shall be conclusive in respect of any default, amount of expenses, or other matter therein stated or appearing.

(5) Any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency (*c*) as may from time to time be required by regulation framed by the Local Government Board (*d*).

(*a*) **Duty of Local Authority.**—This is the first time in the Sale of Food and Drugs Acts that a positive duty is cast upon local authorities to see to the proper execution of the Acts, and a remedy provided in case they make default. Prior to the passing of this Act there were no means of compelling a negligent local authority to do its duty.

(*b*) **Additional Powers.**—In addition to the powers given to them by this section, the Local Government Board and the Board of Agriculture clearly have power to compel a local authority by *mandamus* to appoint an analyst. See *R.* v. *Leicester Guardians*, [1899] 2 Q. B. 632; 68 L. J. Q. B. 945; 81 L. T. 559. It seems doubtful, on the other hand, whether a *mandamus* would be granted to compel a local authority to perform any of the other duties cast upon it by this section, since an adequate remedy seems to be provided by sub-s. (2). See *Passmore* v. *Oswaldtwistle Urban Council*,

[1898] A. C. 387; 62 J. P. 628; 65 L. J. Q. B. 635; 78 L. T. 569.

And the Board may, at their own expense, direct their officers to take proceedings under the Act of 1875 as private individuals. See note (*b*) to s. 2, *ante*.

(*c*) **Proof of Competency.**—This is an addition to the provisions of s. 10 of the Act of 1875, *ante*, p. 43.

(*d*) **Regulation of Local Government Board.**—By Regulation dated March 7th, 1900, a public analyst is required to have competent knowledge of (a) Analytical chemistry; (b) Therapeutics, and (c) Microscopy. See Appendix, *post*, p. 225. See also Circular Letter dated March 8th, 1900, from the Local Government Board to Clerks to Local Authorities. Appendix, *post*, p. 245.

4. *Power for Board of Agriculture to make Regulations as to Analysis of Milk, Cream, Butter, or Cheese.*—(1) The Board of Agriculture may, after such inquiry as they may deem necessary, make regulations (*a*) for determining what deficiency in any of the normal constituents of genuine milk, cream, butter, or cheese, or what addition of extraneous matter or proportion of water, in any sample of milk (including condensed milk), cream, butter, or cheese, shall for the purposes of the Sale of Food and Drugs Acts raise a presumption (*b*), until the contrary is proved, that the milk, cream, butter, or cheese is not genuine or is injurious to health, and an analyst shall have regard to such regulations in certifying the result of an analysis (*c*) under those Acts.

(2) Any regulations made under this section shall be notified in the London and Edinburgh Gazettes, and shall also be made known in such other manner as the Board of Agriculture may direct.

(*a*) **Regulations of Board of Agriculture.**—By the Sale of Milk Regulations, 1901 and 1912 (Appendix, *post*, p. 226), made under this section, milk containing less than 3 per cent. of milk fat or less than 8·5 per cent. of non-fatty solids, and skimmed or separated milk (other than condensed milk), containing less than 8·7 per cent. of milk solids other than fat are to be presumed not to be genuine. These regulations have practically adopted a very elaborate report dated August 15th, 1893, made by Dr. Bell, C.B., F.R.S., the principal of the Government Laboratory. See also Circular Letter, dated December 28th, 1901, from the Board of Agriculture to clerks to local authorities, Appendix, *post* p. 247.

By the Sale of Butter Regulations, 1902, Appendix, *post*, p. 229, butter containing more than 16 per cent. of water is to be presumed not to be genuine.

(*b*) **Presumption.**—Note that the fact that a sample of milk, etc., falls short of the standard is not conclusive evidence of adulteration, The presumption may be rebutted by the evidence of the defendant himself, if believed; independent testimony is not essential (*Lamont* v. *Rodger*, [1911] Sess. Cas. (J.) 24).

It is submitted that milk, etc., which falls very seriously short of the standard ought not in any case to be regarded as being of the nature, substance, or quality of "milk." See note, *ante*, p. 24.

(*c*) **Form of Certificate.**—For form of certificate and decisions thereon, see s. 18 of the Act of 1875, and Schedule, *ante*, pp. 65, 99.

5. *Extension of Margarine Act, 1887, to Margarine-cheese.*—The provisions of the Margarine Act, 1887, as amended by this Act (*a*), shall extend to margarine-cheese, and shall apply accordingly, with the substitution of "margarine-cheese" and "cheese" (*b*) for "margarine" and "butter," and provided that all margarine-cheese sold or dealt in otherwise than by retail shall either be inclosed

in packages marked (*c*) in accordance with the Margarine Act, 1887, as amended by this Act, or be itself conspicuously branded with the words "margarine-cheese."

(*a*) See ss. 6—8, 10, 20 (4), *post*.

(*b*) For definitions, see s. 25, *post*, p. 165.

(*c*) See s. 6 of the Margarine Act, *ante*, p. 120, and s. 6 of this Act, *infra*.

6. *Marking of Margarine and Margarine-cheese.*—(1) Where under this Act or the Margarine Act, 1887, it is required that any package containing margarine or margarine-cheese shall be branded or marked (*a*), the brand or mark shall be on the package (*b*) itself and not solely on a label, ticket, or other thing attached thereto.

(2) The letters required to be printed on the paper wrapper in which margarine or margarine-cheese is sold shall be capital block letters not less than half an inch long (*c*) and distinctly legible, and no other printed matter (*d*) shall appear on the wrapper.

(3) [*The words "or with" (e) in section six of the Margarine Act, 1887, shall be repealed.*]

This section is not repealed by s. 8 of the Act of 1907, *post*, p. 178 (*Williams* v. *Baker*, [1911] 1 K. B. 566; 75 J. P. 89; 80 L. J. K. B. 545; 104 L. T. 178; 9 L. G. R. 178; and *Millard* v. *Allwood*, [1912] 1 K. B. 590; 76 J. P. 139; 81 L. J. K. B. 514; 106 L. T. 111; 10 L. G. R. 127).

(*a*) **Branded or Marked.**—See s. 6 of the Margarine Act, and ss. 1 (1) and 5 of this Act, *ante*, pp. 120, 130, 141.

(*b*) **Package,**—*i.e.*, the package referred to in the first part of s. 6 of the Margarine Act. The latter part of that section dealing with the "paper wrapper" to be used in retail sales is not affected by this sub-section; but see sub-s. (2), *infra*.

(*c*) **Size of Letters.**—Formerly by the repealed words of s. 6 of the Margarine Act, the letters were only required to be a quarter of an inch square.

(*d*) **Other Printed Matter.**—This enactment is due to the decisions in *Fyfe* v. *McLaughlin* (1893), 30 Sc. L. R. 899, and *World's Tea Co.* v. *Gardner* (1895), 59 J. P. 358, *ante*, p. 123, in which it was held that the word "margarine" might appear in the midst of other printed matter. The latter case also deals with other points which are not affected by this sub-section. See note (*h*) to s. 6 of the Margarine Act, *ante*, p. 123, and note (*a*) to s. 7 of the same Act, *ante*, p. 125.

It is an offence under this section to gum on to the wrapper slips or labels containing other printed matter (even the price); or to print other matter on an opaque inner wrapper covered by a transparent outer wrapper printed with the word "Margarine" only (*Millard* v. *Allwood*, *supra*). See, further, s. 8 of the Act of 1907, *post*, p. 178.

(*e*) **"Or with."**—*Ante*, p. 121.

7. *Provisions as to Manufacturers of and Dealers in Margarine and Margarine-cheese.*—(1) Every occupier of a manufactory of margarine or margarine-cheese (*a*), and every wholesale dealer in such substances, shall keep a register showing the quantity and destination of each consignment of such substances sent out from his manufactory or place of business, and this register shall be open to the inspection of any officer of the Board of Agriculture.

[(2) *Any officer of the Board of Agriculture shall have power to enter at all reasonable times any manufactory of margarine or margarine-cheese, and to inspect any process of manufacture therein, and to take samples for analysis*] (*b*).

(3) If any such occupier or dealer—

(a) fails to keep such a register, or

(b) refuses to produce the register (*c*) when required to do so by an officer of the Board of Agriculture, or

(c) fails to keep the register posted up to date, or

(d) wilfully makes any entry in the register which is false in any particular, or

(e) fraudulently omits to enter any particular which ought to be entered in the register,

he shall be liable on summary conviction for the first offence to a fine not exceeding ten pounds, and for any subsequent offence to a fine not exceeding fifty pounds (*d*).

(4) The provisions of section nine of the Margarine Act, 1887 (*e*), relating to registration of manufactories shall extend to any premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on.

(5) The registration of a manufactory or other premises shall be forthwith notified by the local authority to the Board of Agriculture.

(*a*) **Extension of Section.**—By s. 1 of the Act of 1907 this section is extended to consignments of milk-blended butter.

(*b*) **Repeal.**—Sub-section (2) is repealed by s. 2 of the Act of 1907, which substitutes amended provisions.

(*c*) **Taking Notes from Register.**—The Court of Session in Scotland have held that the power to inspect the register carries with it the power to take notes therefrom, and that a margarine manufacturer who refuses to allow an officer of the Board of Agriculture to take notes from his register may be convicted of refusing to produce the register (*Hart* v. *Cohen and Van der Laan* (1902), 4 Fraser, 445; 39 Sc. L. R. 322).

(*d*) **Penalty.**—The court may also imprison for a second or subsequent offence. See s. 17 (2), *post*, p. 150.

(*e*) *Ante*, p. 126.

8. *Restriction on Amount of Butter Fat in Margarine.*—It shall be unlawful to manufacture, sell, expose for sale, or import any margarine, the fat of which contains more than ten per cent. of butter fat (*a*), and every person who manufactures, sells, exposes for sale, or imports any margarine which contains more than that percentage, shall be guilty of an offence under the Margarine Act, 1887 (*b*), and any defence which would be a defence under section seven of that Act (*c*) shall be a defence under this section, and the provisions of the former section shall apply accordingly.

[*Provided that nothing in this section shall apply to any margarine manufactured or imported in fulfilment of any contract made before the twentieth day of July one thousand eight hundred and ninety-nine*] (*d*).

(*a*) **Milk-blended Butter.**—A mixture of butter and fresh milk is not "margarine" within the definition in s. 3 of the Margarine Act, and therefore may be sold, in spite of the provisions of this section, although it contains more than 10 per cent. of butter fat (*Bayley* v. *Pearks, Gunston and Tee, Limited* (1902), 66 J. P. 790; 87 L. T. 67). But by the Act of 1907 restrictions are now placed upon the sale of such substances.

(*b*) See s. 4 of the Margarine Act, *ante*, p. 119, which also creates the penalty.

(*c*) **Defence of Warranty.**—The only defence mentioned in s. 7 of the Margarine Act, *ante*, p. 124, is a defence that the article sold was purchased by the seller *as butter*, with a warranty or invoice to that effect. Therefore, it is apparently no defence to a prosecution under this section to allege that the article sold was purchased *as pure margarine*, with a warranty or invoice to that effect, although it might have been expected that such a defence would have been allowed to prevail.

As to whether the warranty defence in s. 25 of the Act of

1875 applies to this Act, see note (*b*) to that section, *ante*, p. 76.

(*d*) **Repeal.**—The words in square brackets are repealed by the Statute Law Revision Act, 1908.

9. *Provision as to Name and Address of Person selling Milk or Cream in a Public Place.*—Every person who, himself or by his servant, in any highway or place of public resort sells milk or cream from a vehicle or from a can or other receptacle shall have conspicuously inscribed on the vehicle or receptacle (*a*) his name (*b*) and address, and in default shall be liable on summary conviction to a fine (*c*) not exceeding two pounds.

(*a*) **Vehicle or Receptacle.**—In *Crabtree* v. *Skelton* (1901), 70 L. J. K. B. 560, a milk-seller who was selling milk from house to house, occasionally left his cart and walked from house to house with a can. His name and address were on the cart, but not on the can. He was prosecuted for an offence under this section. Lord ALVERSTONE, C.J., and LAWRANCE, J., held that if the sale was from the cart the name and address must be on the cart, but if from the can, then the name and address must be on the can.

(*b*) **Name.**—Presumably the name under which he carries on business at the particular address.

(*c*) **Fine.**—This cannot be increased upon a second conviction. See s. 17, *post*, p. 150.

10. *Division of Samples taken in Course of Delivery or Transit.*—In the case of a sample taken of milk in course of delivery (*a*), or of margarine or margarine-cheese forwarded by a public conveyance (*b*), the person taking the sample shall forward by registered parcel or otherwise a portion of the sample marked, and sealed, or fastened up, to the

consignor ir his name and address appear on the can or package containing the article sampled.

(*a*) **Milk in Course of Delivery.**—See s. 3 of the Act of 1879, *ante*, p. 107, and the notes thereon ; and see also s. 5 and Sched. III. of the Milk and Dairies Act, 1914, *post* pp. 190, 210.

(*b*) **Margarine Forwarded by Public Conveyance.**—See s. 8 of the Margarine Act, *ante*, p. 126, and the notes thereon.

11. *Provisions as to Condensed Separated or Skimmed Milk.*—Every tin or other receptacle containing condensed separated or skimmed milk (*a*) must bear a label clearly visible to the purchaser on which the words "Machine-skimmed Milk," or "Skimmed Milk," as the case may require, are printed in large and legible type, and if any person sells (*b*) or exposes or offers for sale condensed separated or skimmed milk (*a*) in contravention of this section he shall be liable (*c*) on summary conviction to a fine (*d*) not exceeding ten pounds.

(*a*) **"Condensed Separated or Skimmed."**—This means "condensed separated milk or condensed skimmed milk," and the section does not apply to ordinary separated or skimmed milk (*French* v. *Card* (1909), 73 J. P. 389 ; 101 L. T. 428).

(*b*) **Importer.**—The importer of condensed separated or skimmed milk in receptacles not labelled as above is also liable to a penalty. See s. 1 of this Act, *ante*, p. 130.

(*c*) **Defence of Warranty.**—It is not quite clear whether a warranty is a defence to a prosecution under this section. See note (*b*) to s. 25 of the Act of 1875, *ante*, p. 76.

(*d*) **Fine.**—This cannot be increased upon a second conviction. See s. 17, *post*, p. 150.

12. *Notice of Mixtures.*—The label referred to in section eight of the Sale of Food and Drugs Act,

1875 (*a*), shall not be deemed to be distinctly and legibly written or printed within the meaning of that section unless it is so written or printed that the notice of mixture given by the label is not obscured by other matter (*b*) on the label: Provided that nothing in this enactment shall hinder or affect the use of any registered trade mark, or of any label which has been continuously in use for at least seven years before the commencement of this Act; but the Comptroller-General of Patents, Designs, and Trade Marks shall not register any trade mark purporting to describe a mixture unless it complies with the requirements of this enactment.

(*a*) *Ante*, p. 33.

(*b*) **Other Matter.**—The section does not prohibit other matter entirely as in the case of the margarine label under s. 6 (2), *ante*.

13. *Amendment of* 38 *&* 39 *Vict. c.* 63, *as to Samples.*—[*In section fourteen of the Sale of Food and Drugs Act*, 1875, *the words* "*offer to*" (*a*) *and the words* "*proceed accordingly and shall*" (*a*) *shall be repealed.*]

This section is repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49), but the words here repealed are, of course, not revived.

(*a*) *Ante*, p. 51.

14. *Taking Samples in Course of Delivery.*—The provisions of section three and section four of the Sale of Food and Drugs Act Amendment Act, 1879 (*a*) (relating to the taking of samples of milk in course of delivery), shall apply to every other article of food (*b*): Provided that no samples shall

be taken under this section except upon the request or with the consent of the purchaser or consignee (*c*).

(*a*) *Ante*, pp. 107, 113.

(*b*) **Food.**—For definition, see s. 26, *post*, p. 165.

(*c*) **Milk.**—This proviso does not apply to samples of milk. They are dealt with by s. 3 of the Act of 1879 and s. 5 and Sched. III. of the Milk and Dairies Act, 1914, which contain no such proviso.

15. *Amendment of* 38 *&* 39 *Vict. c.* 63, *as to Registered Parcels.*—In section sixteen of the Sale of Food and Drugs Act, 1875, the words "registered parcel" shall be substituted for the words "registered letter" (*a*).

(*a*) *Ante*, p. 59.

16. *Obstruction of Officer in Discharge of his Duties.*—Any person who wilfully (*a*) obstructs (*b*) or impedes any inspector or other officer in the course of his duties under the Sale of Food and Drugs Acts, or by any gratuity, bribe, promise, or other inducement prevents, or attempts to prevent, the due execution by such inspector or officer of his duty under those Acts, shall be liable, on summary conviction, for the first offence to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds (*c*).

These provisions are supplementary to those of s. 17 of the Act of 1875, *ante*, p. 62, and s. 4 of the Act of 1879, *ante*, p. 113. The corresponding section of the Milk and Dairies Act, 1914 (s. 11, *post*, p. 197), is much wider.

(*a*) **Guilty Knowledge.**—Intentional misconduct is essential to this offence. See *Taylor* v. *Nixon*, [1910] 2 I. R. 94,

where a married woman was licensee of a publichouse, which was managed by her husband. An inspector asked for whisky out of a particular bottle, and the husband deliberately smashed it, so that no sample could be taken. The justices convicted the wife of obstructing, but the King's Bench Division in Ireland quashed the conviction, as there was no evidence that the act was done with her authority or connivance.

(*b*) **"Obstructs or Impedes."**—To refuse to allow an inspector to take a sample of milk from the tap of the can, but to offer him one taken from the top of the milk, is not to obstruct him under this section (*Soutar* v. *Kerr*, [1907] Sess. Cas. (J.) 49; 5 Adam, 260).

It is submitted that where an inspector is being helped by an assistant, it would be an offence under this section knowingly to obstruct the assistant, since this would amount to obstructing the inspector himself.

(*c*) **Penalty.**—He may also, under certain circumstances, be imprisoned. See s. 17, *infra*.

17. *Penalties for Offences under the Sale of Food and Drugs Acts.*—(1) Where, under any provision of the Sale of Food and Drugs Act, 1875, a person guilty of an offence is liable to a fine which may extend to twenty pounds as a maximum, he shall be liable for a second offence under the same provision to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds.

(2) Where, under any provision of the Sale of Food and Drugs Acts, a person guilty of an offence is liable to a fine exceeding fifty pounds, and the offence, in the opinion of the court, was committed by the personal act, default, or culpable negligence of the person accused (*a*), that person shall be liable (if the court is of opinion that a fine will not meet

the circumstances of the case) to imprisonment, with or without hard labour, for a period not exceeding three months.

Application of Section.—For the provisions to which this section applies, see ss. 6, 7, 9 and 27 of the Act of 1875, s. 4 of the Margarine Act, and ss. 1, 8, 16 and 20 of this Act.

(*a*) **Person Accused.**—This sub-section apparently does not apply to a limited company. See *Pearks, Gunston and Tee, Limited* v. *Ward*, and *Hennen* v. *Southern Counties Dairies Co., Limited*, [1902] 2 K. B. 1; 66 J. P. 774; 71 L. J. K. B. 656; 87 L. T. 51.

18. *Articles Sold in Tins or Packets.*—Notwithstanding anything in section seventeen of the Sale of Food and Drugs Act, 1875, where any article of food or drug is exposed for sale in an unopened tin or packet duly labelled, no person shall be required to sell it except in the unopened tin or packet in which it is contained.

This provision was inserted in consequence of a recommendation of the Select Committee of 1894—6, who called attention to the unfairness of asking for a portion of the contents of a properly labelled tin or package, and then instituting proceedings because no declaration of admixture was made.

19. *Time for Proceeding and Regulation as to Summons.*—(1) When any article of food or drug has been purchased from any person for test purposes, any prosecution under the Sale of Food and Drugs Acts in respect of the sale thereof, notwithstanding anything contained in section twenty of the Sale of Food and Drugs Act, 1875, shall not be instituted (*a*) after the expiration of twenty-eight days (*b*) from the time of the purchase.

(2) In any prosecution under the Sale of Food and Drugs Acts the summons shall state particulars (*c*) of the offence or offences alleged, and also the name of the prosecutor (*d*), and shall not be made returnable in less time than fourteen days (*e*) from the day on which it is served, and there must be served therewith a copy of any analyst's certificate (*f*) obtained on behalf of the prosecutor.

Time Limit.—This section supersedes s. 10 of the Act of 1879. The time limit of twenty-eight days is now applied to proceedings in respect of all articles, and not of perishable articles alone, and the summons is made returnable in not less than fourteen days, instead of seven. The provision that the certificate of the prosecutor's analyst must accompany the summons is also new. The cases decided under the repealed section are applicable *mutatis mutandis to* this.

(*a*) **Institution of Prosecution.**—The prosecution is "instituted" on the day when the information is laid, and not on the day when the summons is served (*Beardsley* v. *Giddings*, [1904] 1 K. B. 847; 68 J. P. 222; 73 L. J. K. B. 378; 90 L. T. 651; 53 W. R. 78; 20 Cox C. C. 645; 2 L. G. R. 719). The contrary decision at petty sessions, reported in *Cowling* v. *Taylor's Drug Co., Limited* (1901), 66 J. P. 11, is therefore overruled.

In *Brooks* v. *Bagshaw*, [1904] 2 K. B. 798; 68 J. P. 514; 73 L. J. K. B. 839; 91 L. T. 535; 53 W. R. 13; 20 Cox C. C. 727; 2 L. G. R. 1007, an information was laid and a summons issued within twenty-eight days from the purchase, but the summons was not served and was allowed to drop, and a second summons was issued on the same information and was served after the twenty-eight days. The High Court held that as the first summons had not been adjudicated upon on the merits, the proceedings had been instituted in time.

(*b*) **Twenty-eight Days.**—The provision as to time is imperative, and is not waived by the appearance of the defendant under protest. See *Dixon* v. *Wells* (1890), 25

Q. B. D. 249; 54 J. P. 725; 59 L. J. M. C. 116; 62 L. T. 812; 38 W. R. 606; 17 Cox C. C. 48.

In the case of *Frew* v. *Morris* (1897), 24 Rettie (J. C.) 50; 34 Sc. L. R. 527, decided under the repealed section, the Court of Justiciary in Scotland held that in computing the period of twenty-eight days, the day on which the purchase took place is not to be taken into account; and that, therefore, when the sample was bought at 9 a.m., on November 4th, a summons served at 7.30 p.m. on December 2nd was in time. It is not clear whether this decision would be followed in England. At first sight it seems to strain in favour of the prosecution the language of a section obviously framed in favour of the defendant. See the reasoning of CHITTY, J., in *Re Railway Sleepers Supply Co.* (1885), 29 Ch. D. 204. But in *Radcliffe* v. *Bartholomew*, [1892] 1 Q. B. 161; 56 J. P. 262; 61 L. J. M. C. 63; 65 L. T. 677; 40 W. R. 63, a case under the Prevention of Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), which provides that every complaint under the Act is to be made "within one calendar month after the cause of such complaint shall arise," WILLS and LAWRANCE, JJ., held that the day on which the offence was committed was to be excluded, and that an information laid on June 30th for an offence committed on May 30th was in time. It should be observed that in neither of the two last cases were the words the same as those of this section, and also that the words of this section differ somewhat from those of the repealed section under which *Frew* v. *Morris* was decided. See also *McQueen* v. *Jackson* in note (*e*), *post*.

This time limit does not apply to prosecutions for giving a false warranty (*Cook* v. *White*, [1896] 1 Q. B. 284; 60 J. P. 330; 65 L. J. M. C. 46; 74 L. T. 53; 44 W. R. 409; 18 Cox C. C. 229). Such prosecutions are subject to the limitation of six months imposed by the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) (*Whitaker* v. *Pomfret Bros.*, [1902] 1 K. B. 661; 66 J. P. 408; 71 L. J. K. B. 353; 86 L. T. 420; 50 W. R. 398). In that case, on November 20th, 1900, a wholesale dealer sold pepper to a retailer with a false warranty. On May 16th, 1901, the retailer sold some of the pepper to an inspector, and was prosecuted under s. 6 of the Act of 1875. He pleaded the warranty and was discharged. On July 6th, 1901, the wholesale

dealer was prosecuted for giving a false warranty. Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that the prosecution was out of time, since more than six months had elapsed since the warranty was given.

The time limit does not apply to samples taken under s. 2 of the Act of 1907, *post*, p. 170 (*Monro* v. *Central Creamery Co., Limited* [1912] 1 K. B. 578 ; 76 J. P. 131 ; 81 L. J. K. B. 547 ; 106 L. T. 114 ; 10 L. G. R. 134).

(*c*) **Particulars.**—The question what are sufficient particulars is one for the justices to decide, and where a defendant objects to the particulars of the offence as being insufficient, the right course for him to adopt would appear to be to ask for an adjournment in order that he may be better able to meet the charge. But since it is apparently in the absolute discretion of the justices to decide whether the particulars are sufficient, and whether they will grant the adjournment, it would appear improbable from the following cases that their ruling would be interfered with on an appeal to the High Court.

In *R.* v. *Wakefield* (1890), 54 J. P. 148, the defendant had been convicted of selling milk not of the nature, substance and quality demanded. On analysis, the milk was found to be mixed with water, but the summons did not give any particulars as to how the milk was adulterated, merely stating that the article demanded was new milk. The defendant did not ask for an adjournment, but contended that the statement of particulars of adulteration was a condition precedent to the prosecution, and that the justices had no jurisdiction to try the case. The rule, however, was discharged, and it was held that it was for the justices to decide whether the particulars were sufficient.

In *Barnes* v. *Rider* (1892), 57 J. P. 473 ; 62 L. J. M. C. 25 ; 68 L. T. 447 ; 17 Cox C. C. 623, which was also a prosecution for the adulteration of milk, the summons merely stated that the milk sold was not of the nature, substance, and quality demanded. The defendant objected that no particulars of the offence had been given, but the stipendiary magistrate overruled the objection and convicted him. The High Court (POLLOCK, B., and HAWKINS, J.) decided that the summons was defective, and sent the case back to the

magistrate with the expression of their opinion that he should have dismissed the summons.

In *Neal* v. *Devenish*, [1894] 1 Q. B. 544 ; 58 J. P. 246 ; 63 L. J. M. C. 78 ; 70 L. T. 628, which also dealt with the adulteration of milk, the decision in *R.* v. *Wakefield* was followed and approved, while *Barnes* v. *Rider* was expressly disapproved. The particulars of the offence were that the defendant had sold milk "adulterated contrary to s. 6 of the Sale of Food and Drugs Act, 1875." The defendant objected, as in the preceding case, that these particulars were insufficient, but the justices overruled the objection, and convicted him. The High Court (MATHEW and CAVE, JJ.) decided that the particulars were sufficient, and further that, even if they were not, it was for the justices to decide the point, and that the proper course for the defendant was to ask for an adjournment. MATHEW, J., said : "We were referred to the case of *Barnes* v. *Rider* as supporting the appellant's contention ; but that case seems to me to be entirely opposed to the earlier case of *R.* v. *Wakefield*."

In future it will probably be unnecessary to raise any such objections as are contained in the above cases, since the defendant will obtain all the information he is likely to want from the analyst's certificate, which must now be served with the summons. And it is suggested that it is better not to state in the summons the exact percentage of adulteration alleged, since if the third part of the sample goes to the Government chemist, and he certifies a somewhat different percentage, it is sometimes argued that the defendant has not committed the offence with which he is charged.

(*d*) **Name of the Prosecutor.**—In *Burns* v. *Williamson* (1897), 24 Rettie (J. C.) 58 ; 2 Adam, 308 ; 34 Sc. L. R. 670, a summons citing a person to answer a complaint "at the instance of the burgh prosecutor" without giving his name, was held to be bad under s. 10 of the Act of 1879.

(*e*) **Fourteen Days.**—This means fourteen clear days. See *McQueen* v. *Jackson*, [1903] 2 K. B. 163 ; 72 L. J. K. B. 606 ; 88 L. T. 871, where the King's Bench Division held that a summons served on November 26th, and made returnable on December 10th, was bad.

The provision applies *mutatis mutandis* to Scotland, where

a defender must not be cited on less than fourteen days *induciae*. See *Dunlop* v. *Goudie* (1895), 22 Rettie (J. C.) 34; 1 Adam, 554.

(*f*) **Service of Certificate.**—Service of a copy of the certificate is not a condition precedent to the jurisdiction of the justices; omission to do so is only an informality capable of being waived by the defence, though fatal if the objection is taken at once (*Grimble & Co.* v. *Preston*, [1914] 1 K. B. 270; 78 J. P. 72; 83 L. J. K. B. 347; 110 L. T. 115; 30 T. L. R. 119; 12 L. G. R. 382, distinguishing *Batt* v. *Mattinson* (1900), 64 J. P. 615; 82 L. T. 800; 19 Cox C. C. 532). In the former case the question whether a copy of the certificate must be served with a false warranty summons was raised, but not decided.

For further provisions as to certificates for the prosecution see Sched. III. (4) of the Milk and Dairies Act, 1914, *post*, p. 211; and, as to certificates for the defence, s. 22 of this Act, *post*, p. 163.

20. *Provisions as to Use of Warranty or Invoice as Defence, and Proceedings against the Warrantor.*—(1) A warranty or invoice (*a*) shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts unless the defendant has, within seven days after service of the summons, sent (*b*) to the purchaser a copy of such warranty or invoice (*c*) with a written notice stating that he intends to rely on the warranty or invoice, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person (*d*).

(2) The person by whom such warranty or invoice is alleged to have been given shall be entitled to appear (*e*) at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(3) A warranty or invoice given by a person

resident outside the United Kingdom shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts, unless the defendant proves that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty or invoice.

(4) Where the defendant is a servant (*f*) of the person who purchased the article under a warranty or invoice he shall, subject to the provisions of this section, be entitled to rely on section twenty-five of the Sale of Food and Drugs Act, 1875 (*g*), and section seven of the Margarine Act, 1887 (*h*), in the same way as his employer or master would have been entitled to do if he had been the defendant, provided that the servant further proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor.

(5) Where the defendant in a prosecution under the Sale of Food and Drugs Acts has been discharged under the provisions of section twenty-five of the Sale of Food and Drugs Act, 1875, as amended by this Act, any proceedings under the Sale of Food and Drugs Acts (*i*) for giving the warranty relied on by the defendant in such prosecution, may be taken as well before a court having jurisdiction in the place (*k*) where the article of food or drug to which the warranty relates was purchased for analysis as before a court having jurisdiction in the place where the warranty was given.

(6) Every person (*l*) who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a false warranty in writing (*m*), shall be liable on summary conviction (*n*), for the

first offence, to a fine not exceeding twenty pounds, for the second offence to a fine not exceeding fifty pounds, and for any subsequent offence to a fine not exceeding one hundred pounds (*o*), unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true (*p*).

(*a*) **Warranty or Invoice.**—It should be remembered that an invoice not amounting in law to a warranty is only available as a defence in margarine prosecutions. See notes to s. 25 of the Act of 1875 and to s. 7 of the Margarine Act, *ante*, pp. 76 and 124.

(*b*) **"Sent."**—A copy of the warranty is duly "sent" if it is posted within seven days, even though it does not, and cannot, reach the addressee till after the seven days (*Retail Dairy Co., Limited* v. *Clarke*, [1912] 2 K. B. 388; 76 J. P. 282; 81 L. J. K. B. 845; 106 L. T. 848; 23 Cox C. C. 6; 28 T. L. R. 361; 10 L. G. R. 547).

(*c*) **Copy of Warranty.**—Apparently the actual words of the warranty need not be set out, provided its terms are distinctly stated. Thus, in *Irving* v. *Callow Park Dairy Co., Limited* (1902), 66 J. P. 804; 87 L. T. 70, the defendants had entered into a contract for a periodical supply of milk to them by a farmer with a warranty of its purity. The contract and warranty were contained in a number of letters between the parties, and each can of milk was labelled "Warranted pure." On being prosecuted under s. 6 of the Act of 1875 the defendants gave notice that they relied upon a warranty, and sent a copy of the label on the cans, but did not disclose the correspondence. The King's Bench Division held that they had complied with the terms of this sub-section, and Lord ALVERSTONE, C.J., said: "What was intended by the terms of the section was that the prosecutor should know the terms of the warranty under which the defendant had bought . . . 'A copy of such warranty' . . . refers back to s. 25 of the Act of 1875, and means a copy of that which entitles the defendant to believe

that the article was the same in nature, substance, and quality as that demanded by the prosecutor. Therefore, *primâ facie* that means a copy of the terms of the warranty on which the defendant bought, in order that the prosecution may know what the defence is going to be . . . A copy of the correspondence would not be half as useful as a copy of the terms of the warranty."

In *Farthing* v. *Parkinson* (1904), 68 J. P. 353; 90 L. T. 783; 20 Cox C. C. 661; 2 L. G. R. 989, the appellant bought butter under a verbal contract that a written warranty should be given and put upon the invoice. The invoice arrived on the same day, and contained the words "We guarantee all butter sold by us to be absolutely pure." The appellant was not satisfied with this, so a week later, after the delivery of the butter, he induced the seller to add the words "Guaranteed pure butter in accordance with the 3rd and 7th sections of the Margarine Act, 1887." The butter was adulterated, and the appellant was prosecuted. His solicitors then wrote to the prosecutor giving notice of warranty, and said, "The following is a copy of the warranty," setting out the two sentences above mentioned. The justices thought that this was not a good notice, because it did not correctly set out the words which were on the invoice originally, and because it was not accompanied by a copy of the invoice, and they refused to go into the question of warranty. The High Court held that under all the circumstances of the case the notice was sufficient. WILLS, J., said: "I think s. 20, which requires a copy of the warranty to be delivered to the complainant, did not mean to say that under all circumstances the warranty must be correctly set out where there is room for contention as to what the warranty actually was." And KENNEDY, J., instanced the case of a warranty contained in correspondence where it might be difficult to say what its terms really were. Many other subjects were discussed in the case, but it does not appear to be an authority for anything more than the proposition stated by WILLS, J., above.

(*d*) **Notice to Warrantor.**—The words "within 7 days" in the section apply only to the notice to the purchaser. The notice to the warrantor may be given at any time before

the justices have to decide whether the warranty is a good defence, subject to their discretion to grant an adjournment if necessary (*Marcus* v. *Crook*, [1914] 3 K. B. 173; 30 T. L. R. 538).

(*e*) **"Appear."**—It is presumed that this entitles the giver of the warranty to appear by counsel or solicitor, and to address the court.

(*f*) **Servant.**—This sub-section was enacted because in *Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181; 55 J. P. 775; 60 L. J. M. C. 146; 65 L. T. 149; 39 W. R. 607, Lord COLERIDGE, C.J., appears to have held that a servant who is prosecuted for selling an adulterated article is not protected by a warranty given to his master.

(*g*) *Ante*, p. 76.

(*h*) *Ante*, p. 124.

(*i*) See s. 27 of the Act of 1875, *ante*, p. 91, and sub-s. (6) of this section.

(*k*) **Venue of Information.**—The object of this sub-section was to remove the inconvenience caused by the decision in *R.* v. *Smith*, [1896] 1 Q. B. 596; 60 J. P. 372; 65 L. J. M. C. 104; 74 L. T. 348; 44 W. R. 492; 18 Cox C. C. 307, where it was held that the giver of a false warranty must be prosecuted in the place where the warranty was given.

The warranty is not given until it is received by the purchaser. Therefore, where a warranty was attached to a cask of vinegar sent from London to a purchaser at Nuneaton, it was held that proceedings might be taken either in London or at Nuneaton (*Grimble & Co.* v. *Preston*, [1914] 1 K. B. 270; 78 J. P. 72; 83 L. J. K. B. 347; 110 L. T. 115; 30 T. L. R. 119; 12 L. G. R. 382).

But the sub-section only applies if the warranty was given to the person from whom the article in question was purchased for analysis. Thus in *Manners* v. *Tyler*, [1902] 1 K. B. 901; 71 L. J. K. B. 585; 86 L. T. 716; 50 W. R. 604, Manners, in Wiltshire, sold milk to A. in Middlesex with a false warranty. A. sold it unopened to B. in Middlesex with a further warranty. B. was prosecuted under s. 6 of the Act of 1875, set up the warranty from A., and was discharged. A. was then prosecuted in Middlesex for

giving a false warranty, set up the warranty from Manners and was discharged. Manners was then prosecuted in Middlesex for giving a false warranty, and objected that there was no jurisdiction. Lord ALVERSTONE, C.J., and DARLING and CHANNELL, JJ., held that the objection was good; and CHANNELL, J., said that the defect pointed out in *R.* v. *Smith*, *supra*, was remedied by the present sub-section, but that "the legislature did not consider the case of successive warranties, and did not provide for them." Lord ALVERSTONE, C.J., also pointed out that A. had really been discharged not under s. 25 of the Act of 1875, but under sub-s. (6) of this section, because his real defence was that when he gave the false warranty "he had reason to believe, that the statements therein were true," and that he produced the warranty from Manners merely as evidence in support of that defence; therefore sub-s. (3) of this section did not apply to the case at all.

(*l*) **Liability of Limited Company.**—A limited company can be convicted of this offence (*Chuter* v. *Freeth and Pocock, Limited*, [1911] 2 K. B. 832; 75 J. P. 430; 80 L. J. K. B. 1322; 105 L. T. 238; 27 T. L. R. 467; 9 L. G. R. 1055).

(*m*) **Admissibility of Analyst's Certificate.**—In *R.* v. *Smith* and *Tyler* v. *Kingham*, *supra*, pp. 92, 70, it was held that the analyst's certificate given for the purpose of prosecuting the retail seller cannot be used as evidence against the wholesale dealer in a prosecution under this sub-section; or, in other words, that the machinery of s. 21 of the Act of 1875, which makes the analyst's certificate "sufficient evidence of the facts therein stated," cannot be used in a prosecution for giving a false warranty. The effect of this is that in a prosecution under this sub-section, the analyst must be called to give oral evidence of the result of his analysis; and, of course, evidence must also be forthcoming to show that the sample analysed formed part of the article in respect of which the false warranty was given.

But, apparently, this principle does not apply to certicates obtained for the defence (see the preliminary note to s. 22 of this Act, *post*, p. 164), or to cases where a sample of milk or cream has been taken under the Milk and Dairies Act, 1914 (see Sched. III. (4) of that Act, *post*, p. 211).

(*n*) **Time Limit.**—Prosecutions under this sub-section must be instituted within six months from the giving of the false warranty (*Whitaker* v. *Pomfret Brothers*, [1902] 1 K. B. 661; 66 J. P. 408; 71 L. J. K. B. 353; 86 L. T. 420; 50 W. R. 398); except in the case of a continuing warranty for successive deliveries, when the six months run from the date of the delivery in question (*Thomas, Limited* v. *Houghton*, [1911] 2 K. B. 959; 75 J. P. 523; 81 L. J. K. B. 21; 105 L. T. 825; 22 Cox, C. C. 628; 9 L. G. R. 1142).

(*o*) **Penalty.**—The defendant may also be imprisoned in certain circumstances. See s. 17 of this Act, *ante*, p. 150.

(*p*) **Scienter.**—In *Derbyshire* v. *Houliston*, (1897) 1 Q. B. 772; 61 J. P. 374; 66 L. J. Q. B. 569; 76 L. T. 624; 45 W. R. 527, it was held that a defendant could not be convicted of giving a false warranty unless he knew that the statements in the warranty were false. This sub-section goes a step further and enacts that he shall not escape unless he had reason to believe that the statements were true.

In *Oatley* v. *Lemon* (1905), 69 J. P. 163; 92 L. T. 200; 20 Cox, C. C. 791; 3 L. G. R. 315, a Derbyshire farmer sold milk with a warranty to a London milkman, delivery to take place at Addison Road Station. On arrival it was found to be adulterated. The milkman was prosecuted, pleaded the warranty and was discharged. On a prosecution for giving a false warranty, the farmer proved that he had reason to believe that the warranty was true when the milk was handed to the railway company in Derbyshire. No evidence was given by the prosecution to show that the farmer had reasonable cause to apprehend that the milk would be tampered with in transit. The magistrate thereupon found as a fact that the farmer had reasonable cause to believe that the warranty was true when the milk arrived at Addison Road, and, therefore, that he was entitled to the protection of the sub-section. The High Court held that under the circumstances the findings were right. See also *Dairy Supply Co., Limited* v. *Houghton* (1911), 76 J. P. 43.

21. *Duty of Court to send Article for Analysis.*—The justices or court referred to in section twenty-

two of the Sale of Food and Drugs Act, 1875, shall on the request of either party (*a*) under that section cause an article of food or drug to be sent to the Commissioners of Inland Revenue for analysis, and may, if they think fit, do so without any such request.

(*a*) **Sending Sample to Government Laboratory.**—The request of either party now renders it obligatory to send the sample to the Government Laboratory, whereas under s. 22 of the Act of 1875, the justices or court had a discretion in the matter. They have still that discretion where there is no request.

If the justices are requested to send the sample, but are unable to do so because it has been accidentally lost or destroyed, the defendant cannot be convicted (*Hutchison* v. *Stevenson* (1902), 4 Fraser (J.C.) 69; 3 Adam, 651; 39 Sc. L. R. 789).

But it is no objection that the condition of the sample has accidentally become such that it cannot be analysed. See *Suckling* v. *Parker*, which is fully set out on p. 57, *ante*.

The certificate of the Government analyst need not be in the form prescribed by the Act of 1875 (*Foot* v. *Findlay*, [1909] 1 K. B. 1; 72 J. P. 494; 78 L. J. K. B. 48; 99 L. T. 798; 25 T. L. R. 10; 6 L. G. R. 1129).

22. *Provisions as to Certificates of Analysis.*—(1) At the hearing of the information in any proceeding under the Sale of Food and Drugs Acts, the production by the defendant of a certificate of analysis by a public analyst in the form prescribed in section eighteen of the Sale of Food and Drugs Act, 1875 (*a*), shall be sufficient evidence (*b*) of the facts therein stated, unless the prosecutor requires that the analyst be called as a witness.

(2) A copy of every such certificate shall be sent to the prosecutor at least three clear days before the return day, and if it be not so sent the court may,

if it thinks fit, adjourn the hearing on such terms as may seem proper.

Application of Section.—This section is complementary to s. 21 of the Act of 1875, *ante*, p. 69. There is, however, this difference between the two sections: this section applies to all proceedings under the Acts, whereas s. 21 of the Act of 1875 has been said to apply only to proceedings under s. 20 of that Act. See note (*b*) to s. 21 of the Act of 1875, *ante*, p. 69. As to certificates respecting milk and cream, see also Sched. III (4) of the Milk and Dairies Act, 1914, *post*, p. 211.

(*a*) *Ante*, p. 18. Under s. 5 and Sched. III of the Milk and Dairies Act, 1914, *post*, pp. 190, 210, analyses of samples which are not the subject of the proceedings are made admissible in evidence under certain circumstances, but it is not clear whether this section has that effect, or whether it is confined to the analysis of the part of the sample originally handed to the vendor.

(*b*) **Sufficient Evidence.**—Of course the certificate referred to in this section, like the certificate produced by the prosecution, is not conclusive. If certificates are produced on both sides the magistrates will have to determine which is the more reliable. See also note (*c*) to s. 21 of the Act of 1875, *ante*, p. 71.

23. *Transfer of Powers from Secretary for Scotland to Local Government Board.*—This Act shall apply to Scotland with the substitution for "the Local Government Board" of "the Local Government Board for Scotland," and all powers and duties vested in or imposed on the Secretary for Scotland in relation to the Sale of Food and Drugs Acts shall be transferred to, vested in, or imposed on the Local Government Board for Scotland.

24. *Application to Ireland.*—This Act shall apply to Ireland with the substitution for "the Board of Agriculture" of "the Department of Agriculture

and Technical Instruction for Ireland," and for "the Local Government Board" of "the Local Government Board for Ireland," and for "the London and Edinburgh Gazette" of "the Dublin Gazette."

25. *Interpretation of Terms.*—In this Act, unless the context otherwise requires—

The expression "margarine-cheese" means any substance, whether compound or otherwise, which is prepared in imitation of cheese, and which contains fat not derived from milk:

The expression "cheese" means the substance usually known as cheese, containing no fat derived otherwise than from milk:

The expression "local authority" means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts (*a*), and the expression "public analyst" means an analyst so appointed:

Other expressions have the same meaning as in the Sale of Food and Drugs Acts, and an offence under this Act shall be treated as an offence under those Acts (*b*).

(*a*) See s. 10 of the Act of 1875, *ante*, p. 43.

(*b*) It is not quite clear what the effect of these last words is. See the last paragraph of note (*b*) to s. 25 of the Act of 1875, *ante*, p. 77, and *Rex* v. *Otto Monsted, Limited, ante*, p. 75.

They do not give a right of appeal to quarter sessions in prosecutions by the Commissioners of Customs under s. 1 of this Act (*Rex* v. *Otto Monsted, Limited, ante*, p. 75).

26. *Definition of "Food."*—For the purposes of the Sale of Food and Drugs Acts the expression

"food" shall include every article used for food (*a*) or drink by man, other than drugs or water (*b*), and any article which ordinarily enters into or is used in the composition or preparation of human food (*c*); and shall also include flavouring matters and condiments.

(*a*) **Used for Food.**—Chewing gum is not an article used for food within the meaning of this section (*Shortt* v. *Smith* (1895), 11 T. L. R. 325; *Bennett* v. *Tyler* (1900), 64 J. P. 119; 81 L. T. 787; 19 Cox, C. C. 434).

It is not clear whether "used for food" means "intended for use as food" or "capable of being used for food." As to this see the cases cited in note (*b*) to s. 2 of the Act of 1875, *ante*, p. 3.

(*b*) **"Water."**—By s. 70 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), provision has been made for the analysis of water, including water likely to be used in the manufacture of drinks. As to distilled water, see note (*b*) to s. 2 of the Act of 1875, *ante*, p. 4.

(*c*) **Extension of Definition.**—The addition of the words "and any article which ordinarily enters into or is used in the composition or preparation of human food," etc., is due to the decision in the case of *James* v. *Jones* (1894), 58 J. P. 230, in which it was held that baking powder made up of 20 per cent. of bicarbonate of soda, 40 per cent. of alum, and 40 per cent. of ground rice, was not an article of food within the meaning of the repealed section (s. 2 of the Act of 1875). The effect of this decision (see the judgment of the court delivered by HAWKINS, J.), was to narrow the scope of the Act very considerably. A similar decision had previously been given by the Recorder of Cambridge in *Warren* v. *Phillips* (1880), 44 J. P. 61. The Select Committee on Food Products Adulteration in 1896 noted these decisions with regret, and recommended the extension of the definition, which, as it now stands, is very wide.

27. *Repeal of Enactments in Schedule.*—[*The enactments in the Schedule to this Act are hereby*

repealed to the extent mentioned in the third column of that Schedule.]

This section is repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49), but this, of course, does not revive the enactments here repealed.

28. *Short Title and Commencement.*—(1) This Act may be cited as the Sale of Food and Drugs Act, 1899, and the Sale of Food and Drugs Act, 1875, and the Sale of Food and Drugs Act Amendment Act, 1879, and the Margarine Act, 1887, and this Act may be cited collectively as the Sale of Food and Drugs Acts, 1875 to 1899, and are in this Act referred to as the Sale of Food and Drugs Acts.

(2) [*This Act shall come into operation* (*a*) *on the first day of January one thousand nine hundred.*]

Sub-section (2) is repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

(*a*) In *Batt* v. *Mattinson* (1900), 64 J. P. 615; 82 L. T. 800; 19 Cox, C. C. 532, an offence under s. 6 of the Act of 1875 was committed on December 19th, 1899. On January 8th, 1900, a summons was issued, returnable on the 19th. RIDLEY and PHILLIMORE, JJ., held that the procedure was to be regulated by the Act of 1899, although the offence had been committed before the Act came into operation.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	*Short Title.*	*Extent of Repeal.*
38 & 39 *Vict.* c. 63	*The Sale of Food and Drugs Act*, 1875.	*In section two, the definition of the term "food."* *In section fourteen, the words "offer to," and the words "proceed accordingly and shall."* *Section fifteen.* *In section twenty-seven, the words from "Every person who shall give a false warranty in writing" to "a penalty not exceeding twenty pounds."*
42 & 43 *Vict.* c. 30	*The Sale of Food and Drugs Act Amendment Act*, 1879.	*Section ten.*
50 & 51 *Vict.* c. 29	*The Margarine Act*, 1887.	*In section six, the words "or with," and the words "not less than a quarter of an inch square."*
54 & 55 *Vict.* c. 46	*The Post Office Act*, 1891.	*Section eleven.*

The Schedule is repealed by the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49).

THE BUTTER AND MARGARINE ACT, 1907.

(7 Edw. 7, c. 21.)

An Act to make further provision with respect to the Manufacture, Importation, and Sale of Butter and Margarine and Similar Substances.

[21st August, 1907.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Registration of Factories and Consignments.*— (1) The provisions of section nine of the Margarine Act, 1887 (*a*), as amended by section seven of the Sale of Food and Drugs Act, 1899 (*b*), relating to the registration of manufactories of margarine, shall, with the necessary adaptations, apply to—

(a) Butter factories, that is to say, any premises on which by way of trade butter is blended, reworked, or subjected to any other treatment, but not so as to cease to be butter ; and

(b) Any premises on which there is manufactured any milk-blended butter (that is to say, any mixture produced by mixing or blending butter with milk or cream other than condensed milk or cream) or on which there is carried on the business of a wholesale dealer in milk-blended butter.

(2) The provisions of section seven of the Sale of Food and Drugs Act, 1899 (*b*), relating to registers of consignments of margarine, shall, with the necessary adaptations, apply to consignments of milk-blended butter.

(3) Premises shall not be used as a butter factory if they form part of or communicate, otherwise than by a public street or road, with any other premises which are required to be registered under the Sale of Food and Drugs Acts (*c*) or under paragraph (b) of this section, and if any premises are so used the occupier thereof shall be guilty of an offence under this Act (*d*), and the local authority shall remove from the register of butter factories kept by them any premises used as a butter factory contrary to this provision :

Provided that this sub-section shall not apply to premises which on the first day of January one thousand nine hundred and seven were being used as a butter factory and formed part of or communicated with premises which were then registered under the Sale of Food and Drugs Acts, if and so long as the Board of Agriculture and Fisheries so direct.

(*a*) *Ante*, p. 126.

(*b*) *Ante*, p. 143.

(*c*) **Premises Required to be Registered.**—That is, the premises of manufacturers of, or wholesale dealers in, margarine or margarine-cheese. See s. 9 of the Margarine Act, 1887, and ss. 5 and 7 (4) of the Act of 1899, *ante*, pp. 126, 141, 144.

(*d*) **Penalty.**—See s. 11, *post*, p. 180.

2. *Inspection of Factories.*—(1) Any officer of the Board of Agriculture and Fisheries or of the Local

Government Board shall have power to enter at all reasonable times any premises registered under the Sale of Food and Drugs Acts or this Act, and to inspect any process of manufacture, blending, reworking, or treatment used therein, and to take samples (*a*) for analysis of any butter, margarine, margarine-cheese, milk-blended butter (*b*), or of any article capable of being used in the manufacture, treatment, or adulteration of any such article as aforesaid.

(2) An officer of a local authority (*c*) who is authorised to procure samples under the Sale of Food and Drugs Acts shall, if specially authorised in that behalf by the local authority, have the like powers of entry, inspection, and sampling as regards any premises registered with the authority as a butter factory.

(3) If the Board of Agriculture and Fisheries have reason to believe—

(a) that on any unregistered premises there is carried on any process of manufacture, blending, reworking, or treatment or any wholesale dealing which under the Sale of Food and Drugs Acts or this Act cannot be carried on except on registered premises ; or

(b) that on any premises butter is by way of trade either made or stored, and that for the purposes of those Acts inspection is desirable,

the Board may specially authorise any officer of the Board to enter the premises, and in such case the officer shall have the like powers of entry, inspection, and sampling as if the premises were registered.

(4) Where under this section a special authority is required, an officer of the Board or of a local authority shall not be entitled to exercise any of his powers under this section unless, if so requested by or on behalf of the occupier of the premises to be entered, he produces his authority.

(5) Sub-section (2) of section seven of the Sale of Food and Drugs Act, 1899, is hereby repealed.

Offences.—It is singular that the Sale of Food and Drugs Acts do not contain any general provision imposing a penalty upon persons who have in their possession adulterated articles of food for the purpose of sale. If, therefore, the result of the inspection and sampling is to discover adulterated butter, etc., no proceedings can be taken unless the case can be brought within one of the following sections, viz., Act of 1907, s. 3 (substances intended to be used for adulteration), s. 4 (butter, margarine, etc. containing more than the statutory amount of water), s. 7 (butter, etc. containing unlawful preservatives), ss. 8, 9 (margarine and milk-blended butter dealt with under unlicensed names); Act of 1875, s. 3 (mixing food with injurious ingredients), s. 9 (injurious abstractions from food); Margarine Act, 1887, s. 6 (cases not properly marked); Act of 1899, s. 8 (margarine containing more than 10 per cent. of butter fat), and, possibly, s. 1 of the Act of 1899 (margarine, etc. imported in unmarked cases).

Obstructing Officer.—For penalty, see s. 16 of the Act of 1899, *ante*, p. 149.

(*a*) **Taking Samples.**—Public officers need not follow the procedure laid down by s. 14 of the Act of 1875, *ante*, p. 51 (*Monro* v. *Central Creamery Co., Limited*, [1912] 1 K. B. 578; 76 J. P. 131; 81 L. J. K. B. 547; 106 L. T. 114; 10 L. G. R. 134, following *Roach* v. *Hall* (1880) 6 Q. B. D. 17; 45 J. P. 220; 50 L. J. M. C. 6; 29 W. R. 304). Officers of the Local Government Board and Board of Agriculture, probably ought to follow s. 2 of the Act of 1899, since by s. 14, *post*, the Acts of 1899 and 1907 are to be read together. But the question is doubtful.

(*b*) **Milk-blended Butter.**—For definition, see s. 1 (1), *ante*.

(*c*) **Authorised Officer.**—See s. 13 of the Act of 1875, *ante*, p. 47.

3. *Prohibition of Adulterants in Butter Factories.*—If any substance intended to be used for the adulteration or butter is found in any butter factory, the occupier (*a*) of the factory shall be guilty of an offence under this Act (*b*), and if any oil or fat capable of being so used is found it shall be deemed to be intended to be so used, unless the contrary is proved.

It should be observed that the section does not in terms provide for the case of butter being found already mixed with an adulterant, and it is, to say the least, doubtfu whether the courts would hold that the words are wide enough to cover such a state of things. It is, therefore suggested that if adulterated butter is found in a factory, no offence has been committed by the occupier unless the case can be brought within one of the provisions enumerated in the preliminary note to the last section.

No analysis appears to be necessary to establish this offence.

(*a*) **Occupier—Actual Offender.**—Where the offence has been committed without the knowledge of the occupier by some other person, the actual offender is the person to be punished. See s. 5 of the Margarine Act, *ante*, p. 120, and s. 11 (2) of this Act, *post*, p. 181.

(*b*) **Penalty.**—See s. 11, *post*, p. 180.

4. *Limit of Moisture in Butter, Margarine, and Milk-blended Butter.*—(1) If any butter which, when prepared for sale or consignment, contains more than sixteen per cent. of water is in any butter factory, or if any margarine which, when prepared for sale or consignment (*a*), contains more than

sixteen per cent. of water is in any margarine factory, or if any such butter or margarine is consigned from a butter factory or margarine factory, the occupier (*b*) of the factory or consignor, as the case may be, shall (whether the excess of moisture is due to adulteration or not) be guilty of an offence under this Act (*c*), unless the occupier or consignor proves to the satisfaction of the court that the butter or margarine was not made, blended, reworked, or treated in the factory.

(2) Any person (*b*) who manufactures, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, any milk-blended butter (*c*) which contains more than twenty-four per cent. of water, shall be guilty of an offence under this Act (*d*).

(*a*) **Consignment.**—For further restrictions on the consignment of margarine and milk-blended butter, see s. 8 of the Margarine Act, *ante*, p. 126, and s. 9 (2) of this Act, *post*, p. 179. These enactments also permit samples of such consignments to be taken in transit.

(*b*) **Conviction of Actual Offender.**—See note (*a*) to the last section.

(*c*) **Milk-blended Butter.**—For definition, see s. 1 (1), *ante*, p. 169.

(*d*) **Penalty.**—See s. 11, *post*, p. 180.

5. *Provisions as to the Importation of Butter, Margarine, and Milk-Blended Butter.*—(1) There shall be included in the list of articles importation of which is made an offence by section one of the Sale of Food and Drugs Act, 1899 (*a*), the following articles :

(e) Butter containing more than sixteen per cent. of water ;

(f) Margarine containing more than sixteen per cent. of water, or more than ten per cent. of butter fat ;

(g) Milk-blended butter containing more than twenty-four per cent. of water ;

(h) Milk-blended butter, except in packages conspicuously marked with such name as may be approved by the Board of Agriculture and Fisheries for the purpose (*b*) ;

(j) Butter, margarine, or milk-blended butter which contains a preservative prohibited by any regulation made under this Act, or an amount of a preservative in excess of the limit allowed by any such regulation (*c*) ;

and in the said section the words " adulterated or impoverished butter (other than margarine) or," and the words " butter or " shall be repealed.

(2) The maximum fine for an offence under the said section one, as amended by this section, shall, where the article in respect of which the offence was committed is butter, margarine, margarine-cheese, or milk-blended butter, be either such as is provided in the said section one (*d*), or, at the election of the Commissioners of Customs, a fine equal to the value of the goods imported bearing the same mark or description, to be estimated and taken according to the rate and price for which goods of the like kind but of the best quality were sold at or about the time of the importation.

(3) In any proceeding under the said section one as amended by this section the certificate of the principal chemist of the Government laboratories, or, if the person who made the analysis be called as

a witness, the evidence of that person, that an imported substance is margarine or milk-blended butter shall raise a presumption, until the contrary is proved, that the substance is margarine or milk-blended butter, and the defendant shall not be entitled to require the person who made the analysis to be called as a witness unless he shall, at least three clear days before the return day, give notice to the prosecutor that he requires his attendance, and deposit with the prosecutor a sum sufficient to cover the reasonable costs and expenses of his attendance, which costs and expenses shall be paid by the defendant in the event of his conviction.

(4) Where a sample taken under the said section one as amended by this section is certified by the principal chemist to be margarine or milk-blended butter the Commissioners of Customs shall upon receiving the certificate forthwith notify the importer thereof.

For definition of "margarine," see s. 13 (1), *post*, p. 182, and "milk-blended butter," s. 1 (1), *ante*, p. 169.

(*a*) *Ante*, p. 130.

(*b*) See s. 9, *post*, p. 178.

(*c*) **Regulations as to Preservatives.**—See s. 7, *post*, p. 177.

(*d*) See the last paragraph of s. 1 (1) of the Act of 1899, *ante*, p. 131.

6. *Regulations as to Milk-solids in Butter.*—The power of making regulations under section four of the Sale of Food and Drugs Act, 1899 (*a*), shall extend to making regulations as to the proportion of any milk-solid other than milk-fat in any sample of butter or milk-blended butter (*b*).

(*a*) *Ante*, p. 140.

(*b*) For definition of "milk-blended butter," see s. 1 (1), *ante*, p. 169.

7. *Regulations as to Preservatives.*—(1) The Local Government Board may, after such inquiry as they deem necessary, make regulations for prohibiting the use as a preservative of any substance specified in such regulations in the manufacture or preparation for sale of butter, margarine, or milk-blended butter, or for limiting the extent to which, either generally or as regards any particular substance or substances, preservatives may be used in the manufacture or preparation for sale of butter, margarine, or milk-blended butter.

(2) Any regulations made under this section shall be notified in the London, Edinburgh, or Dublin Gazette as the case may require, and shall also be made known in such other manner as the Local Government Board may direct.

(3) Any person who manufactures, sells, or exposes (*a*) or offers for sale (*b*), or has in his possession for the purpose of sale, any butter, margarine, or milk-blended butter which contains a preservative prohibited by a regulation under this section or an amount of a preservative in excess of the limit allowed by any such regulation, shall be guilty of an offence under this Act (*c*).

For definition of "margarine," see s. 13 (1), *post*, p. 182, and "milk-blended butter," s. 1 (1), *ante*, p. 169.

(*a*) **"Exposes for Sale."**—For meaning, see note (*d*) to s. 6 of the Margarine Act, *ante*, p. 121.

(*b*) **"Offers for Sale."**—For meaning, see note (*a*) to s. 7 of the Margarine Act, *ante*, p. 125.

(*c*) **Penalty.**—See s. 11, *post*, p. 180.

8. *Marking of Wrappers, etc., used in connection with Margarine.*—If in any wrapper enclosing margarine, or on any package containing margarine, or on any label attached to a parcel of margarine (*a*), or in any advertisement or invoice of margarine a person dealing in margarine describes it by any name other than either "margarine," or a name combining the word "margarine" with a fancy or other descriptive name (*b*) approved by the Board of Agriculture and Fisheries and printed in type not larger than and in the same colour as the word "margarine," he shall be guilty of an offence under this Act (*c*).

For definition of "margarine" see s. 13 (1), *post*, p. 182.

This section does not repeal s. 6 of the Act of 1899, *ante*, p. 142, and therefore the two sections must be read together (*Williams* v. *Baker*, [1911] 1 K. B. 566; 75 J. P. 89; 80 L. J. K. B. 545; 104 L. T. 178; 9 L. G. R. 178, and *Millard* v. *Allwood*, [1912] 1 K. B. 590; 76 J. P. 139; 81 L. J. K. B. 514; 106 L. T. 111; 10 L. G. R. 127).

(*a*) **"Wrapper"—"Package"—"Label."**—For further enactments respecting these, see s. 6 of the Margarine Act, *ante*, p. 120, and ss. 1 and 6 of the Act of 1899, *ante*, pp. 130, 142.

(*b*) **"Fancy Name."**—Restrictions are placed upon the use of fancy names by s. 10, *infra*.

For instances of the use of fancy names before this Act, see note (*c*) to s. 3 of the Margarine Act, *ante*, p. 118.

This section, contrary to its apparent meaning, does not authorise the use of approved fancy names on the wrapper (*Williams* v. *Baker* and *Millard* v. *Allwood*, *supra*).

(*c*) **Penalty.**—See s. 11, *infra*.

9. *Regulation of Sale of Milk-blended Butter.*—(1) Milk-blended butter shall be dealt with under such name or names (*a*) as may be approved by the

Board of Agriculture and Fisheries and under the conditions applicable to the sale or description of margarine (*b*), with the substitution of an approved name for the word "margarine," and with this modification, that, in any case where, in order to comply with those conditions, the article is delivered to the purchaser in a wrapper, there shall, in addition to the approved name, be printed on the wrapper in such manner as the Board approve such description of the article, setting out the percentage of moisture or water contained therein, as may be approved by the Board.

(2) Milk-blended butter, whenever forwarded by any public conveyance, shall be duly consigned under the name which, as respects the article consigned, has been approved by the Board under this section; subject to this modification, section eight of the Margarine Act, 1887 (*c*), shall apply to milk-blended butter in like manner as it applies to margarine.

(3) If any person deals with, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, or describes any milk-blended butter contrary to the provisions of this section, he shall be guilty of an offence under this Act (*d*), but any defence which would be a defence under section seven of the Margarine Act, 1887 (*e*), as respects margarine, shall be a defence under this section as respects milk-blended butter.

For definition of "milk-blended butter" see s. 1 (1), *ante*, p. 169.

(*a*) **Names for Milk-blended Butter.**—See the next section. Query, whether the name may be used on the wrapper in

which the substance is sold. See *Williams* v. *Baker* and *Millard* v. *Allwood*, *ante*, p. 178, and note (*b*), *infra*.

(*b*) **Under Conditions applicable to Sale of Margarine.**—This is a very vague expression. It appears to extend, *mutatis mutandis*, to milk-blended butter all the provisions of the Acts of 1887, 1899 and 1907 which relate to the sale of margarine, but if this is so sub-s. (3) seems unnecessary. At any rate, it must apply s. 6 of the Margarine Act, which deals with the marking, labelling, etc. of margarine.

(*c*) *Ante*, p. 126. It deals with consignments of margarine, and taking samples in transit.

(*d*) **Penalty.**—See s. 11, *post*.

(*e*) *Ante*, p. 124. The warranty defence. But by the joint effect of this sub-section on the one hand and s. 11 (2) of this Act, s. 12 of the Margarine Act, and s. 25 of the Act of 1875 on the other, the vendor, etc. of adulterated milk-blended butter seems to have his choice between the warranty sections of the Act of 1875 and the Margarine Act.

10. *Names of Margarine, etc.*—A name shall not be approved by the Board of Agriculture and Fisheries for use in connection with margarine if it refers to or is suggestive of butter or anything connected with the dairy interest, nor shall such a name be approved as a name under which milk-blended butter may be imported or dealt with.

For definition of "margarine" see s. 13 (1), *post*, p. 182, and "milk-blended butter," s. 1 (1), *ante*, p. 169.

11. *Penalties for Offences.*—(1) Any person guilty of an offence under this Act shall be liable on conviction under the Summary Jurisdiction Acts for a first offence to a fine not exceeding twenty pounds and for a second offence to a fine not exceeding fifty pounds and for a third or any subsequent offence to

a fine not exceeding one hundred pounds, and in cases where imprisonment can be inflicted under section seventeen of the Sale of Food and Drugs Act, 1899 (*a*), to such imprisonment as is by that section authorised.

(2) Section five of the Margarine Act, 1887 (*b*) (which exempts employers from liability in certain cases), and section eleven of the same Act (which relates to the appropriation of penalties), and section twelve of the same Act (*c*) (which relates to proceedings under that Act), shall apply to proceedings under this Act, with the substitution of references to this Act for references to the Margarine Act, 1887 (*d*).

(*a*) *Ante*, p. 150. It must be on a second or subsequent conviction, and the offence must have been committed by the personal act, default, or culpable negligence of the accused.

(*b*) *Ante*, p. 120.

(*c*) *Ante*, p. 128.

(*d*) **Effect of Sub-section.**—This is a curious example of legislation by double reference, for s. 12 of the Margarine Act itself incorporates certain sections of the Act of 1875. It should be noted that by s. 14 (1), *post*, p. 182, the Acts of 1899 and 1907 are to be construed as one, and the joint effect of these two sub-sections seems to be that ss. 12 to 28 inclusive of the Act of 1875, ss. 5 and 12 of the Margarine Act, and the whole of the Acts of 1899 and 1907 are to be read together as one Act. If this is so, it forms a very ill-digested enactment, for in several cases it will be found that there are duplicate provisions expressed in different language covering the same ground. Instances which have occurred to the present editor will be found in note (*b*) to s. 25 of the Act of 1899, note (*a*) to s. 2, and note (*e*) to s. 9 of this Act, and more may be found hereafter. The difficulty thus created was discussed in *Monro* v. *Central Creamery Co., Limited*, [1912] 1 K. B. 578; 76 J. P. 131; 81 L. J. K. B. 547; 106 L. T. 114; 10 L. G. R. 134.

12. *Amendment of s.* 8 *of Margarine Act,* 1887.—Except in the Administrative County of London, section eight of the Margarine Act, 1887 (*a*), shall have effect as if the words "inspector of weights and measures" were inserted after the word "nuisances."

(*a*) *Ante*, p. 126.

13. *Definition of Margarine.*—(1) For the purposes of the Sale of Food and Drugs Acts and this Act the expression "margarine" shall mean any article of food, whether mixed with butter or not, which resembles butter (*a*) and is not milk-blended butter.

(2) The above definition shall be substituted for the definition of margarine in the Margarine Act, 1887.

(*a*) **"Resembles Butter."**—These words are wider than those in the old definition, which were "prepared in imitation of butter."

The old definition and the cases under it, some of which are applicable to the present one, will be found on pp. 117, 118, *ante.*

14. *Short Title, Construction, and Commencement.*—(1) This Act may be cited as the Butter and Margarine Act, 1907, and shall be construed as one with the Sale of Food and Drugs Act, 1899 (*a*), and may be cited with the Sale of Food and Drugs Acts as the Sale of Food and Drugs Acts, 1875 to 1907.

(2) This Act shall come into operation on the first day of January one thousand nine hundred and eight.

(*a*) For the effect of this provision, see note (*d*) to s. 11, *ante*, p. 181.

THE MILK AND DAIRIES ACT, 1914.

(4 & 5 Geo. 5, c. 49.)

An Act to make better provision with respect to the Sale of Milk and the Regulation of Dairies.

[10th August 1914.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. *Prohibition of Sale of Tuberculous Milk.*—If a person—

(a) Sells, or offers or exposes for sale (*a*), or suffers to be sold or offered or exposed for sale, for human consumption (*b*) or for use in the manufacture of products for human consumption ; or

(b) Uses or suffers to be used in the manufacture of products for human consumption (*b*) ;

the milk (*c*) of any cow which has given tuberculous milk, or is suffering from emaciation due to tuberculosis, or from tuberculosis of the udder, or from acute inflammation of the udder, or from any of the diseases specified in the First Schedule to this Act (*d*), he shall be guilty of an offence against this Act (*e*), if it is proved that he had previously received notice from an officer of a local authority (*f*), or that he otherwise knew, or by the exercise of

ordinary care could have ascertained, that the cow had given tuberculous milk, or was suffering from any such disease.

(*a*) **Sale.**—Milk in the possession of a dairyman is presumed to be for sale or for manufacture for sale. See s. 16 (3), *post*, p. 205. As to the meaning of "offering for sale" see note (*a*) to s. 7 of the Margarine Act, 1887, *ante*, p. 125.

(*b*) **Milk for Human Consumption.**—Milk sold or exposed for sale is presumed to be for human consumption. See s. 16 (2), *post*, p. 204.

(*c*) **Milk.**—Including cream and skimmed or separated milk (s. 16 (1), *post*, p. 204).

(*d*) *Post*, p. 208.

(*e*) For penalty see s. 15, *post*, p. 200.

(*f*) **Local Authority.**—For definition see s. 16 (4), *post*, p. 205.

2. *Extension of Power to make Orders respecting Milk and Dairies.*—(1) The purposes for which general and special orders with respect to milk and dairies, hereinafter referred to as Milk and Dairies Orders, may be made by the Local Government Board under section thirty-four of the Contagious Diseases (Animals) Act, 1878, as amended by the Contagious Diseases (Animals) Act, 1886 (*a*), shall include the following purposes :—

(a) the registration with local authorities (*b*) of all dairies (*c*) ;

(b) the inspection by persons authorised by the local authority (*b*) for the locality in which the dairy (*c*) is situate of dairies and persons in or about dairies who have access to the milk (*d*) or to the churns or other milk receptacles ;

(c) the prevention of danger to health from the sale for human consumption (*e*), or from the use in the manufacture of products for human consumption, of infected, contaminated, or dirty milk (*d*) ;

(d) the prohibition of the addition of colouring matter and the prohibition or regulation of the addition of skimmed or separated milk, or water, or any other substance, to milk (*d*) intended for sale for human consumption (*e*), or the abstraction therefrom of butter-fat or any other constituent, and the prohibition or regulation of the sale for human consumption of milk to which such an addition or from which such abstraction has been made, or which has been otherwise artificially treated ;

(e) the regulation of the cooling, conveyance, and distribution of milk (*d*) intended for sale for human consumption, or for use in the manufacture of products for human consumption (*e*) ;

(f) the labelling, marking, or identification and the sealing or closing of churns, vessels, and other receptacles of milk (*d*) for sale for human consumption (*e*) or used for the conveyance of such milk ;

(g) authorising the use in connexion with the sale of milk of the designation "certified milk," prescribing the conditions subject to which milk may be sold under such designation and prohibiting the use of such designation in connexion with the sale of milk in respect

of which the prescribed conditions are not complied with.

(2) A Milk and Dairies Order with respect to the inspection of cattle in a dairy (*c*) may authorise the person making the inspection to require any cow to be milked in his presence and to take samples of the milk, and to require that the milk from any particular teat shall be kept separate and to take separate samples thereof.

(3) If any person is guilty of a contravention of, or non-compliance with, the provisions of any Milk and Dairies Order, he shall be guilty of an offence against this Act (*f*).

(4) Milk and Dairies Orders shall be made by the Local Government Board with the concurrence of the Board of Agriculture and Fisheries, and shall have effect as if enacted in this Act.

(5) All Milk and Dairies Orders shall be laid before each House of Parliament as soon as may be after they are made ; and if an Address is presented to His Majesty by either House of Parliament within the next subsequent forty days on which that House has sat next after the order is laid before it praying that the order may be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of a new order. If the session of Parliament ends before such forty days as aforesaid have expired, the order shall be laid before each House of Parliament at the commencement of the next session as if it had not previously been laid.

The Rules Publication Act, 1893 (*g*), shall apply

to any such order as if it was a statutory rule within the meaning of section one of that Act.

(*a*) 41 & 42 Vict. c. 74; 49 & 50 Vict. c. 32.

(*b*) **Local Authorities.**—For definition see s. 16 (4), *post*, p. 205.

(*c*) **Dairies.**—For definition see s. 16 (1), *post*, p. 203.

(*d*) **Milk.**—Including cream and skimmed or separated milk (s. 16 (1), *post*, p. 204).

(*e*) **For Human Consumption.**—Milk sold or exposed for sale is presumed to be for human consumption (s. 16 (2), *post*, p. 204).

(*f*) **Offences.**—For penalty see s. 15, *post*, p. 200.

(*g*) 56 & 57 Vict. c. 66.

3. *Power to stop Supply of Milk likely to cause Tuberculosis.*—(1) If the medical officer of health (*a*) of a county or county borough is of opinion that tuberculosis is caused, or is likely to be caused, by the consumption of the milk (*b*) supplied from any dairy (*c*) in which cows are kept within such county or county borough, the provisions of the Second Schedule to this Act (*d*) shall have effect with respect to the reports to be made and the steps to be taken with a view to stopping the supply of milk from the dairy, and with a view to stopping such supply orders may be made in accordance with that schedule, subject to such right of appeal and the payment of compensation in such cases as are provided therein.

(2) Where an order stopping the supply of milk (*b*) is made under the said schedule a dairyman (*e*) shall not be liable for an action for breach of contract if the breach is due to such order.

(3) If any dairyman (*e*) whilst any order made in accordance with the said schedule prohibiting the supply or use of milk is in force supplies or uses any milk (*b*) in contravention of this order he shall be guilty of an offence against this Act (*f*).

(4) The Local Government Board may by order direct that the council of any non-county borough within the county, which is a local authority for the purposes of the Diseases of Animals Acts, 1894 to 1911, shall exercise and perform within the borough the powers and duties of the county council under this and the next succeeding section, and where such an order has been made with respect to any non-county borough this and the next succeeding section shall apply as if the borough were a county borough.

(*a*) **Medical Officer of Health.**—For definition see s. 16 (1), *post*, p. 204.

(*b*) **Milk.**—Including cream and skimmed or separated milk (s. 16 (1), *post*, p. 204.)

(*c*) **Dairy.**—For definition see s. 16 (1), *post*, p. 203.

(*d*) *Post*, p. 208.

(*e*) **Dairyman.**—For definition see s. 16 (1), *post*, p. 204.

(*f*) **Offences.**—For penalty see s. 15, *post*, p. 200.

4. *Obligation to Inspect Dairies in certain Cases.*—(1) If the medical officer of health (*a*) of any local authority (*b*) has reason to suspect that tuberculosis is caused, or is likely to be caused, by the consumption of any milk (*c*) which is being sold or exposed or kept for sale (*d*) within the area of the local authority he shall endeavour to ascertain the source or sources of supply, and on ascertaining the facts

shall forthwith give notice of them to the medical officer of health of the county or county borough in which the cows from which the milk is obtained are kept, whether the dairy (*e*) where they are kept is within or without the area of the local authority, unless the local authority are themselves the council of that county or county borough.

(2) On the receipt of such notice it shall be the duty of the medical officer of health (*a*) of the county or county borough to cause the cattle in the dairy (*e*) to be inspected, and to make such other investigations as may be necessary.

(3) Sufficient notice of the time of the inspection shall be given to the local authority (*b*) whose medical officer of health (*a*) gave the notice, and to the dairyman (*f*) to allow that officer or a veterinary inspector (*g*) or other veterinary surgeon appointed by the authority, and, if desired, another veterinary surgeon appointed by the dairyman being present at the inspection if either party so desire.

(4) The council of the county or county borough on whose medical officer of health (*a*) the notice is served shall send to the medical officer of health of the local authority (*b*) who gave the notice copies of any reports which may have been made by the medical officer of health making the inspection, and of any veterinary or bacteriological or other reports which may have been furnished to him, and shall give him information as to whether any action has been taken upon those reports and as to the nature of that action.

(*a*) **Medical Officer of Health.**—For definition see s. 16 (1), *post*, p. 204.

(*b*) **Local Authority.**—For definition see s. 16 (4), *post*, p. 205.

(*c*) **Milk.**—Including cream and skimmed or separated milk (s. 16 (1), *post*, p. 204).

(*d*) **Kept for Sale.**—All milk in the possession of a "dairyman" is presumed to be kept for sale (s. 16 (3), *post*, p. 205).

(*e*) **Dairy.**—For definition see s. 16 (1), *post*, p. 203.

(*f*) **Dairyman.**—For definition see s. 16 (1), *post*, p. 204.

(*g*) **Veterinary Inspector.**—For definition see s. 16 (1), *post*, p. 204.

5. *Power to take Samples of Milk* (*a*).—(1) It shall be lawful for an inspector of the Local Government Board, or the medical officer of health (*b*) of a local authority (*c*), or any person provided with and, if required, exhibiting an authority in writing (*d*) from such an inspector or from the local authority or medical officer of health, to take for examination samples of milk (*e*) at any time before it is delivered (*f*) to the consumer:

Provided that the powers of a medical officer of health and of a person authorised by him or by the local authority under this section shall, except so far as the Local Government Board may otherwise direct, be exerciseable only within the area of the local authority (*g*).

(2) The result of an analysis or bacteriological or other examination of a sample of milk taken under this Act shall not be admissible as evidence (*h*) in proceedings under this Act, or in proceedings under the Sale of Food and Drugs Acts, 1875 to 1907, unless the provisions of the last-mentioned Acts which relate to the division of samples into parts (*i*)

are complied with, but if those provisions have been complied with, the result of the analysis shall be available for proceedings under the said Acts (as if it had been procured in accordance with those Acts) as well as for proceedings under this Act (*h*); provided that no proceedings shall be taken against any person unless at the time the sample was taken the milk was in his custody or control or was contained in a churn or other receptacle which had been sealed or closed in accordance with a Milk and Dairies Order.

(3) The medical officer of health (*b*) or any other officer authorised for the purpose by a local authority (*c*) within the area of which milk from any dairy (*k*) situate outside that area is being sold or exposed or kept for sale (*l*), may by notice in writing require the medical officer of health or other authorised officer of any other local authority, being an authority for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907 (*m*), to take samples of the milk at that dairy or in the course of transit from that dairy to the area of the first-mentioned local authority.

(4) Upon the receipt of such notice it shall, subject to the provisions of sub-section (1) of this section, be the duty of the medical officer of health or other authorised officer of the other authority as soon as practicable to take samples and to forward, for analysis or bacteriological examination, to the officer who gave the notice a part of any sample so taken, and in taking a sample the officer shall, if so required by the notice, comply with the provisions of the Sale of Food and Drugs Acts, 1875

to 1907, which relate to the division of samples into parts (*i*).

The authority requiring the samples to be taken shall be liable to defray any reasonable expenses incurred, the amount whereof shall in default of agreement be settled by the Local Government Board.

For the purpose of the Sale of Food and Drugs Acts, 1875 to 1907, the sample shall be deemed to have been taken within the area of the officer who gave the notice, and proceedings under those Acts may be taken either before a Court having jurisdiction within the district for which that officer acts or before a Court having jurisdiction in the place where the sample was actually taken (*n*).

(5) In any proceedings under the Sale of Food and Drugs Acts, 1875 to 1907, or this Act, the production of a certificate of the officer who took the sample under this section that the provisions of this section, as to the manner in which samples are to be dealt with, were complied with shall be sufficient evidence of compliance, unless the defendant requires that officer to be called as a witness.

(6) In the exercise at any railway station or upon any railway premises of the powers conferred upon them by this section, such inspector, medical officer of health, or other person so authorised as aforesaid shall conform to such reasonable requirements of the railway company owning or using such station or premises as are necessary to prevent the working of the traffic thereat being obstructed or interfered with.

(*a*) **Other Powers of Sampling Milk.**—Compare this section with s. 3 of the Act of 1879, *ante*, p. 107 (extended to Local Government Board officers by s. 2 of the Act of 1899, *ante*, p. 135), under which all the persons here mentioned already possess powers of taking samples of milk before delivery. The former Act, which differs in points of detail from the present one, is not in terms repealed, and it is not clear whether it is to be regarded as repealed by implication as regards milk and cream, or whether the two sets of powers co-exist.

(*b*) **Medical Officer of Health.**—For definition see s. 16 (1), *post*, p. 204.

(*c*) **Local Authority.**—For definition see s. 16 (4), *post*, p. 205.

(*d*) **Authority in Writing.**—Note that under s. 3 of the Act of 1879, *ante*, p. 107, it was not necessary for the deputy to be authorised in writing.

(*e*) **Milk.**—Including cream and skimmed or separated milk (s. 16 (1), *post*, p. 204).

(*f*) **Before delivery.**—Under s. 3 of the Act of 1879, *ante*, p. 107, the sample had to be taken "in course of delivery." The present wording gets rid of some of the difficulties pointed out in notes (*c*) and (*d*) to that section, *ante*, p. 109.

(*g*) **Within the area of the Authority.**—But under sub-s. (3), *infra*, one local authority may, under certain circumstances, require another local authority to take action.

(*h*) **Admissibility of Analyst's Certificate.**—See s. 21 of the Act of 1875, *ante*, p. 69, and s. 22 of the Act of 1899, *ante*, p. 163.

(*i*) **Division of Samples into parts.**—See s. 14 of the Act of 1875, *ante*, p. 51, and s. 2 of the Act of 1899, *ante*, p. 135. Under s. 3 of the Act of 1879, *ante*, p. 107, it is not necessary to comply with these formalities; see note (*a*) to s. 14 of the Act of 1875, *ante*, p. 53.

(*k*) **Dairy.**—For definition see s. 16 (1), *post*, p. 203.

(*l*) **Kept for Sale.**—All milk in the possession of a "dairy

man" is presumed to be kept for sale. See s. 16 (3), *post*, p. 205.

(*m*) **Authorities executing the Acts.**—Presumably those mentioned in s. 10 of the Act of 1875, *ante*, p. 43; but see the last paragraph of note (*a*) to s. 13 of that Act, *ante*, p. 48.

(*n*) **Venue of Proceedings.**—For the venue of proceedings under the Sale of Food and Drugs Acts, see s. 20 of the Act of 1875, *ante*, p. 66, and s. 20 of the Act of 1899, *ante*, p. 157.

6. *Amendment of Sale of Food and Drugs Acts.*—(1) The provisions of the Sale of Food and Drugs Acts, 1875 to 1907, in reference to the taking of samples of milk (*a*), and any proceedings in connexion therewith, shall be amended (*b*) in accordance with the provisions contained in the Third Schedule to this Act (*c*).

(2) So much of any contract, made after the passing of this Act, as requires a purveyor (*d*) of milk on a sample of his milk being taken under the Sale of Food and Drugs Acts, 1875 to 1907, to send to the person from whom he procured the milk any part of such sample or to give such person notice that a sample has been so taken, shall be null and void.

(*a*) **Samples of Milk.**—The only provisions of the Acts in terms relating to samples of milk are ss. 3 and 4 of the Act of 1879, *ante*, pp. 107, 113, and ss. 1 and 10 of the Act of 1899, *ante*, pp. 132, 146; and the present section seems, on the face of it, to apply only to these. But the first paragraph of Sched. III., *post*, p. 210, looks as if it were intended to apply to samples of milk taken under the general provisions of the Acts, *e.g.*, s. 13 of the Act of 1875, *ante*, p. 47.

(*b*) **Amendment of earlier Acts.**—No part of the Sale of Food and Drugs Acts is in terms repealed by the present Act, and it is impossible to say how far any of their pro-

visions are repealed by implication. See the preliminary note to s. 3 of the Act of 1879, *ante*, p. 108.

(*c*) *Post*, p. 210.

(*d*) **Purveyor.**—Whether wholesale or retail (s. 16 (1), *post*, p. 204).

7. *Appointment of Veterinary Inspectors.*—(1) A local authority (*a*) may, and when required by the Local Government Board shall, appoint or combine with another local authority in appointing one or more veterinary inspectors (*b*) or employ for the purposes of this Act and the Milk and Dairies Orders any veterinary inspector appointed under the Diseases of Animals Act, 1894 (*c*), and any local authority may, and when required by the Local Government Board shall, provide or arrange for the provision of such facilities for bacteriological or other examinations of milk (*d*) as may be approved by the Board.

(2) Any order requiring a combination of local authorities for the purposes of this section may provide for all matters incidental to such combination, and in particular how the expenses incurred are to be apportioned.

(*a*) **Local Authority.**—For definition see s. 16 (4), *post*, p. 205.

(*b*) **Veterinary Inspector.**—For definition see s. 16 (1), *post*, p. 204.

(*c*) 57 & 58 Vict. c. 57.

(*d*) **Milk.**—Including cream and separated or skimmed milk (s. 16 (1), *post*, p. 204).

8. *Regulations as to Imported Milk.*—The Local Government Board shall make regulations under

the Public Health (Regulations as to Food) Act, 1907 (*a*), for the prevention of danger arising to public health from the importation of milk (*b*) and milk products intended for sale for human consumption or for use in the manufacture of products for human consumption (*c*).

(*a*) 7 Edw. 7, c. 32.

(*b*) **Milk.**—Including cream and skimmed or separated milk (s. 16 (1), *post*, p. 204).

(*c*) **For Human Consumption.**—Milk sold or exposed for sale is presumed to be for human consumption (s. 16 (2), *post*, p. 204).

9. *Establishment of Milk Depots.*—(1) The sanitary authority (*a*) of any district may, with the approval of the Local Government Board, establish and thereafter maintain depots for the sale at not less than cost price of milk (*b*) specially prepared for consumption by infants under two years of age, and purchase and prepare milk and provide such laboratories, plant, and other things, and exercise and perform such other powers and duties, as may be necessary for the purposes of this section.

(2) The Local Government Board may attach such conditions to their approval as they may deem necessary.

(*a*) **Sanitary Authority.**—For definition see s. 16 (1), *post*, p. 204.

(*b*) **Milk.**—Including cream (s. 16 (1), *post*, p. 204).

10. *Enforcement of Duties of Local Authorities.*—(1) If a local authority (*a*) fail to fulfil any of their duties under this Act, or under any Milk and Dairies Order, the Local Government Board may

after holding a local inquiry make such order as they think necessary or proper for the purpose of compelling the authority to fulfil their duties, and any such order may be enforced by mandamus.

(2) Where the authority in default is a district council, the Local Government Board may determine that all or any of the powers of the council under this Act or the Milk and Dairies Orders be transferred to the county council, and those powers shall be transferred accordingly, and section sixty-three of the Local Government Act, 1894 (*b*), shall apply as if the powers had been transferred under that Act.

(*a*) **Local Authority.**—For definition see s. 16 (4), *post*, p. 205.

(*b*) 56 & 57 Vict. c. 73.

11. *Penalty for Obstruction.*—If any person obstructs (*a*) any inspector or other officer of the Local Government Board, or any medical officer of health (*b*), or any veterinary inspector or surgeon, or other officer of or person employed by a local authority (*c*), in the execution of his powers under this Act or any Milk and Dairies Order, or fails to give any such officer all reasonable assistance in his power, or to furnish him with any information he may reasonably require, he shall be guilty of an offence against this Act (*d*).

(*a*) **Obstruction.**—As to what amounts to obstruction see notes (*a*) and (*b*) to s. 16 of the Act of 1899, *ante* p. 149. But many acts which would not amount to "obstruction" would be "failures to afford reasonable assistance" within the meaning of the present section.

(*b*) **Medical Officer of Health.**—For definition see s. 16 (1), *post*, p. 204.

(*c*) **Local Authority.**—For definition see s. 16 (4), *post*, p. 205.

(*d*) **Offences.**—For penalty see s. 15, *post*, p. 200.

12. *Supplemental Provisions.*—(1) The Local Government Board may by order apply for the purposes of this Act the provisions of any public general Act relating to the holding of local inquiries by the Local Government Board, and the expenses of such inquiries, and the powers of the persons holding any such inquiry, and the manner in which notices may be served.

(2) A local authority (*a*) may delegate to a committee any of their powers or duties (other than the power of raising rates) under the provisions of this Act or of any Milk and Dairies Order, and in such case anything required or authorised by those provisions to be done to or by the local authority may be done to or by the committee to which such powers and duties have been so delegated.

(3) For the purpose of the exercise and performance of their powers and duties by sanitary authorities (*b*) under this Act and the Milk and Dairies Orders the purposes of this Act and those Orders shall be deemed to be included amongst the purposes of the Public Health Act, 1875 (*c*), or the Public Health (London) Act, 1891 (*d*), as the case may require.

(4) Any inspection of cattle made in pursuance of this Act or any Milk and Dairies Order shall be carried out by a veterinary inspector (*e*) or other properly qualified veterinary surgeon.

(*a*) **Local Authority.**—For definition see s. 16 (4), *post*, p. 205.

(*b*) **Sanitary Authority.**—For definition see s. 16 (1), *post*, p. 204.

(*c*) 38 & 39 Vict. c. 55.

(*d*) 54 & 55 Vict. c. 76.

(*e*) **Veterinary Inspector.**—For definition see s. 16 (1), *post*, p. 204.

13. *Compensation to Existing Officers or Servants.*—If in consequence of the passing of this Act or of anything done in pursuance or in consequence thereof any officer or servant of any local authority (*a*) who held office at the passing of this Act suffers any direct pecuniary loss by abolition of office, or by diminution or loss of fees or salary, he shall be entitled to have compensation paid to him for such pecuniary loss by the local authority, and such compensation shall be determined in accordance with and subject to the conditions prescribed by section one hundred and twenty of the Local Government Act, 1888 (*b*), and that section with the necessary adaptations shall apply accordingly.

(*a*) **Local Authority.**—For definition see s. 16 (4), *post*, p. 205.

(*b*) 51 & 52 Vict. c. 41.

14. *Expenses of Local Authorities.*—The expenses of local authorities (*a*) under this Act (*b*) and the Milk and Dairies Orders shall be defrayed—

(a) in the case of a county council, out of the county fund, as expenses for general county purposes, or, if an order of the Local Government Board so directs, as respects any such expenses as expenses for special county pur-

poses charged on such part of the county as may be provided by the order ;

(b) in the case of the common council, out of the general rate ;

(c) in the case of the council of a metropolitan borough, as part of the expenses incurred by the council in the execution of the Public Health (London) Act, 1891 (*c*) ;

(d) in the case of the council of a municipal borough or urban or rural district, as part of their general expenses incurred in the execution of the Public Health Acts.

(*a*) **Local Authorities.**—For definition see s. 16 (4), *post*, p. 205.

(*b*) **Expenses of executing Act.**—As to the expenses of executing the Sale of Food and Drugs Acts, see s. 29 of the Act of 1875, *ante*, p. 93, and s. 9 of the Act of 1879, *ante*, p. 115.

(*c*) 54 & 55 Vict. c. 76.

15. *Provisions as to Offences.*—(1) If any person commits an offence against this Act (*a*), he shall be liable on summary conviction to a fine not exceeding in the case of a first offence five pounds and in the case of a second or subsequent offence fifty pounds, and if the offence is a continuing offence to a further fine not exceeding forty shillings for each day during which the offence continues.

(2) Proceedings against a dairyman (*b*) for failure to comply with an order made under the Second Schedule to this Act (*c*), requiring the dairyman not to supply milk from a dairy (*d*), may be taken before a court of summary jurisdiction, either in the place where the offence was committed or in the

place where the dairy is situated, and shall be taken only by the authority by which the order was made.

(3) Where the occupier of a dairy (*d*) is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and, if, after the commission of the offence has been proved, the occupier of the dairy proves to the satisfaction of the court—

(a) that he has used due diligence to enforce the execution of this Act and the Milk and Dairies Orders; and

(b) that the said other person had committed the offence in question without his knowledge, consent or connivance;

that other person shall be summarily convicted of the offence, and the occupier shall be exempt from any fine, and the person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(4) When it is made to appear to the satisfaction of the authority by or on whose behalf proceedings are about to be taken—

(a) that the actual occupier of the dairy has used all due diligence to enforce the execution of this Act and the Milk and Dairies Orders; and

(b) by what person the offence has been committed; and

(c) that it has been committed without the knowledge, consent, or connivance of the occupier

of the dairy and in contravention of his orders ;

proceedings shall be taken against the person who is believed to be the actual offender without first proceeding against the occupier of the dairy.

(5) The duty of taking proceedings for enforcing the provisions of section one of this Act (*e*) shall rest on the county council or county borough council, without prejudice however to the power of a sanitary authority (*f*) in a county to take such proceedings, and the duty of taking proceedings for enforcing the provisions of any Milk and Dairies Order shall rest on the local authority prescribed in the order, and the clerk of the local authority, or other officer whom the local authority may appoint, shall have power, if so authorised by the local authority, to institute and carry on such proceedings :

Provided that in cases where the Local Government Board make an Order under section three of this Act (*g*) directing that the council of a non-county borough shall exercise and perform within the borough the powers and duties of a county council under sections three and four of this Act (*h*), the duty of taking proceedings for enforcing the provisions of section one of this Act in such borough shall rest on the council thereof and not on the county council.

(6) Notwithstanding anything contained in any Act to the contrary, all fines imposed in any proceedings instituted by or on behalf of a local authority in the exercise of their powers and duties under this Act shall be paid to the authority (*i*), and carried to the credit of the fund out of which the

expenses incurred by the authority under this Act are defrayed.

(*a*) **Penalties under the Sale of Food and Drugs Acts.**—These will be found in the sections creating the various offences and in s. 17 of the Act of 1899, *ante*, p. 150.

(*b*) **Dairyman.**—For definition see s. 16 (1), *infra*.

(*c*) *Post*, p. 208.

(*d*) **Dairy.**—For definition see s. 16 (1), *infra*.

(*e*) *Ante*, p. 183.

(*f*) **Sanitary Authority.**—*I.e.*, the borough or district council (s. 16 (1), *infra*).

(*g*) *Ante*, p. 187.

(*h*) *Ante*, pp. 187, 188.

(*i*) **Application of Penalties.**—Under the Sale of Food and Drugs Acts the penalty is paid to the prosecuting officer, and handed over by him to the local authority (s. 26 of the Act of 1875, *ante*, p. 90).

16. *Interpretation.*—(1) In this Act and in the Contagious Diseases (Animals) Act, 1878, and the Contagious Diseases (Animals) Act, 1886, unless the context otherwise requires—

The expression "dairy" includes any farm, cow-shed, milk store, milk shop, or other place from which milk is supplied on, or for, sale or in which milk is kept or used for purposes of sale or manufacture into butter, cheese, dried milk or condensed milk for sale, and, in the case of a purveyor of milk who does not occupy any premises for the sale of milk, includes the place where he keeps the vessels used by him for the sale of milk, but does not include a shop from which milk is not supplied otherwise than in the properly closed and unopened receptacles in which it was delivered to the shop, or a shop

or other place in which milk is sold for consumption on the premises only ;

The expression " milk " includes cream, skimmed milk, and separated milk ;

The expression " dairyman " includes any occupier of a dairy, any cowkeeper, or any purveyor of milk ;

The expression " purveyor of milk " includes a seller of milk, whether wholesale or by retail (*a*) ;

The expression " medical officer of health " includes any duly qualified medical practitioner authorised by the council to act on behalf of the medical officer of health ;

The expression " veterinary inspector " means an inspector being a member of the Royal College of Veterinary Surgeons, or having such other veterinary qualifications as may be approved by the Board of Agriculture and Fisheries ;

The expression " sanitary authority " as respects London means the sanitary authority for the purposes of the Public Health (London) Act, 1891, and elsewhere the council of a borough or of an urban or rural district, and the expression " sanitary district " means the district of such authority ;

The expression " common council " means the mayor, aldermen, and commons of the City of London in common council assembled.

(2) Where milk is sold or exposed or kept for sale it shall be presumed to be sold or exposed or kept for sale for human consumption or for use in the manufacture of products for human consumption, unless the contrary is proved.

(3) Where milk is kept in any dairy, or in the custody or possession of any dairyman, it shall be presumed to be kept for purposes of sale, or manufacture for sale, unless the contrary is proved.

(4) The expression "local authority" in section nine of the Contagious Diseases (Animals) Act, 1886, and in this Act shall include sanitary authorities (*b*) and county councils, but with respect to the provisions of any Milk and Dairies Order, the order may prescribe by what local authority or authorities the several provisions thereof are to be enforced and executed, and any such order may provide for the giving of assistance and information by county councils to sanitary authorities and by sanitary authorities to county councils for the purpose of their respective duties under this Act or under any Milk and Dairies Order.

(5) The Scilly Islands shall be deemed to be a county and the council of those Islands the council of a county, and any expenses incurred by that council under this Act or the Milk and Dairies Orders shall be treated as general expenses of the council.

(*a*) **Purveyor of Milk.**—In *Spiers and Pond, Limited* v. *Green*, [1912] 3 K. B. 576; 77 J. P. 11; 82 L. J. K. B. 26; 29 T. L. R. 14; 10 L. G. R. 1050, it was held that the keeper of a railway refreshment room who sells three or four glasses of milk a week is not "carrying on the trade of a purveyor of milk."

(*b*) **Sanitary Authorities.**—*I.e.*, borough and district councils (sub-s. (1), *supra*).

17. *Application to London.*—(1) Section fifty-three of the Public Health Acts Amendment Act, 1907 (which confers power to require dairymen to

furnish lists of sources of supply), shall apply to London as if it were herein re-enacted with the substitution of references to sanitary authorities (*a*) and districts of sanitary authorities for references to local authorities and the districts of local authorities, and any penalties imposed by the said section as so applied shall be recoverable summarily.

(2) Any provisions of the Public Health Act, 1875, applied by this Act shall, for the purposes for which they are so applied, extend to London, subject to necessary adaptations.

(3) Section thirty-four of the Contagious Diseases (Animals) Act, 1878, as amended by section nine of the Contagious Diseases (Animals) Act, 1886, and this Act shall, notwithstanding anything in the Public Health (London) Act, 1891, extend to London.

(4) A Milk and Dairies Order affecting London shall provide for the exercise and performance by sanitary authorities (*a*) in London of all powers and duties under the order which would have been imposed or conferred on sanitary authorities if this Act had not been passed and the order had been made under section twenty-eight of the Public Health (London) Act, 1891, as amended by sections five and six of the London Government Act, 1899, except that the order may provide for the exercise and performance by the London County Council of powers and duties relating to the inspection of cattle in dairies (*b*).

(5) Nothing in this Act, or in any Milk and Dairies Order, shall affect the powers with respect to the registration of dairymen and purveyors of

milk within their own area conferred on sanitary authorities in London by section five of the London County Council (General Powers) Act, 1908.

(6) The borrowing of moneys by any metropolitan borough council for the purposes of this Act shall be subject in all respects to the provisions of sections one hundred and eighty-three to one hundred and eighty-nine of the Metropolis Management Act, 1855, as amended by any subsequent Act.

(7) Where the authority in default is a metropolitan borough council the provisions of section one hundred and one of the Public Health (London) Act, 1891, shall apply in all respects as if such default had been made under the said Act.

(*a*) **Sanitary Authorities.**—For definition see s. 16 (1), *ante*, p. 204.

(*b*) **Dairies.**—For definition see s. 16 (1), *ante*, p. 203.

18. *Short Title, Commencement, Extent, and Repeal.*—(1) This Act may be cited as the Milk and Dairies Act, 1914, and shall come into operation on the first day of January nineteen hundred and fifteen, or such later date, not being later than the first day of October nineteen hundred and fifteen as the Local Government Board may by order appoint.

(2) This Act shall not extend to Scotland or Ireland.

(3) The enactments specified in the Fourth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule, and there shall also be repealed, as from the expiration of one year after the commencement of this Act, so much of any local Act as deals with any of the matters dealt with by any of the provisions of this Act.

SCHEDULES.

FIRST SCHEDULE.

DISEASES OF COWS IN ADDITION TO TUBERCULOSIS TO WHICH SECTION ONE APPLIES.

Acute mastitis.
Actinomycosis of the udder.
Anthrax.
Foot-and-mouth disease.
Suppuration of the udder.
Any other disease affecting cows which by a Milk and Dairies Order is declared to be a disease for the purposes of section one of this Act.

SECOND SCHEDULE.

PROCEDURE FOR STOPPING SUPPLY OF MILK UNDER SECTION THREE.

(1) The medical officer of health (*a*) of the county or county borough in which the cows from which the milk is obtained are kept shall report the matter to the council of such county or county borough (hereinafter referred to as the responsible authority).

(2) His report shall be accompanied by the veterinary or bacteriological reports which have been furnished to him.

(3) On the receipt of the report or a copy of the report from the medical officer of health, the responsible authority may serve on the dairyman (*b*) notice to appear before them, or furnish an explanation in writing, within such time not less than forty-eight hours from the time of the service of the notice on him as may be specified in the notice, to show cause why such an order as is hereinafter mentioned should not be made.

(4) The notice shall be accompanied by a copy of the reports made in respect of the dairy (*b*).

(5) The responsible authority if, in their opinion, the dairyman has failed to show cause why an order should not be made, may make an order prohibiting him, either absolutely or unless such conditions as may be prescribed in the

order are complied with, from supplying for human consumption, or using or supplying for use in the manufacture of products for human consumption, any milk from the dairy or from any particular cow or cows therein until the order has been withdrawn in accordance with the provisions of this Schedule.

(6) The order shall specify the grounds on which it is made.

(7) On the making of such an order, a copy of the order shall forthwith be served on the dairyman, and notice of the facts shall also be served on the Local Government Board and the Board of Agriculture and Fisheries.

(8) Where no order is made, the responsible authority shall allow the dairyman any reasonable expenses incurred by him in showing cause why the order should not be made.

(9) An order prohibiting the supply or use of milk made under this Schedule shall forthwith be withdrawn, and notice of withdrawal served on the dairyman as soon as may be after the responsible authority or their medical officer of health is satisfied that the milk supplied from the dairy is not likely to cause disease.

(10) The medical officer of health shall have power to withdraw an order if so authorised by the responsible authority.

(11) If a dairyman is aggrieved by the making or continuance of an order prohibiting the supply or use of milk, he may by complaint under the Summary Jurisdiction Acts appeal to a court of summary jurisdiction.

(12) A court of summary jurisdiction on such appeal may confirm, vary, or withdraw the order and may direct to and by whom the costs of the appeal are to be paid.

(13) Pending the determination of the appeal, an order shall remain in force unless previously withdrawn.

(14) If an order prohibiting the supply or use of milk is made against a dairyman he shall unless the order has been made in consequence of his own default or neglect be entitled to recover from the responsible authority full compensation for any damage or loss which he may have sustained by reason of the making of the order. The dairyman shall also be entitled to full compensation for any damage or loss which he may sustain in consequence of the

responsible authority unreasonably neglecting or refusing to withdraw an order made against him.

(15) In the case of an appeal under this schedule being allowed, the court to which the appeal is made shall determine and state whether the order, the subject of appeal, was made in consequence of the default or neglect of the dairyman or the withdrawal has been unreasonably neglected or refused.

(16) Any dispute as to the fact of damage or loss or as to the amount of compensation shall be settled by arbitration in the same manner as provided by the Public Health Act, 1875, and any sum awarded as compensation shall be recoverable as a civil debt.

(17) If the compensation claimed does not exceed twenty pounds it may at the option of either party instead of being settled as hereinbefore provided be settled by, and recoverable before, a court of summary jurisdiction.

(*a*) **Medical Officer of Health.**—For definition see s. 16 (1), *ante*, p. 204.

(*b*) **Dairyman : Dairy.**—For definition see s. 16 (1), *ante*, pp. 203, 204.

THIRD SCHEDULE.

AMENDMENT OF SALE OF FOOD AND DRUGS ACTS (*a*).

(1) Where, under the Sale of Food and Drugs Acts, 1875 to 1907 (*b*), a sample of milk (*c*) is procured from a purveyor (*d*) of milk, he shall, on being required to do so by the person by whom or on whose behalf the sample was taken, state the name and address of the seller or consignor from whom he received the milk.

(2) The local authority (*e*) in whose district the sample was taken may take or cause to be taken one or more samples of milk in course of transit or delivery (*f*) from such seller or consignor.

Within sixty hours after the sample of milk was procured from the purveyor he may serve (*g*) on the local authority a notice stating the name and address of the seller from whom he received the milk and the time and place of delivery to

the purveyor by the seller or consignor of milk from a corresponding milking (*h*) and requesting them to take immediate steps to procure, as soon as practicable, a sample of milk in the course of transit or delivery from the seller or consignor to the purveyor, unless a sample has been so taken since the sample was procured from the purveyor, or within twenty-four hours prior to the sample being procured from the purveyor, and where a purveyor has not served such notice as aforesaid, he shall not be entitled to plead a warranty as a defence in any such proceedings (*i*);

Provided that the purveyor shall not have any such right to require that such a sample shall be taken in cases where the milk, from which the sample procured from the purveyor was taken, was a mixture of milk obtained by the purveyor from more than one seller or consignor.

If a purveyor has served (*g*) on the local authority such a notice as aforesaid, and the local authority have not procured a sample of milk from the seller or consignor in accordance with the foregoing provisions, no proceedings under the Sale of Food and Drugs Acts, 1875 to 1907, shall be taken against the purveyor in respect of the sample of milk procured from him.

(3) Any sample of milk so taken in the course of transit or delivery shall be submitted for analysis to the analyst to whom the sample procured from the purveyor is or was submitted.

(4) If proceedings are taken against the purveyor of milk, a copy of the certificate of the result of the analysis of every sample so taken in the course of transit or delivery shall be furnished to the purveyor, and every such certificate shall, subject to the provisions of section twenty-one of the Sale of Food and Drugs Act, 1875 (*k*), be sufficient evidence of the facts stated therein, and shall be admissible as evidence (*l*) on any question whether the milk sold by the purveyor was sold in the same state as he purchased it.

(5) The local authority (*e*) if the district in which the first-mentioned sample was taken may, instead of, or in addition to, taking proceedings against the purveyor of milk, take proceedings against the seller or consignor.

(6) If a sample of milk (*c*) of cows in any dairy (*m*) is taken in course of transit or delivery from that dairy, the

owner of the cows may, within sixty hours after the sample of milk was procured, serve on the local authority a notice requesting them to take immediate steps to procure as soon as practicable a sample of milk from a corresponding milking (*h*) of the cows, and the foregoing provisions shall apply accordingly:

Provided that the person taking the sample shall be empowered to take any such steps at the dairy as may be necessary to satisfy him that the sample is a fair sample of the milk of the cows when properly and fully milked.

(*a*) **Amendment of Sale of Food and Drugs Acts.**—No part of these Acts is in terms repealed, and therefore it is submitted that the provisions of this Schedule must, as far as possible, be taken to be in addition to, and not in substitution for, the earlier provisions. Where there is a clear inconsistency the later Act must prevail. It should be noted that the present Act applies only to milk and cream, and therefore the earlier Acts are entirely unaffected as regards all other articles. See also note (*b*) to s. 6, *ante*, p. 194.

(*b*) **Powers of Procuring Samples.**—These will be found in s. 13 of the Act of 1875, *ante*, p. 47, s. 3 of the Act of 1879, *ante*, p. 107, and ss. 2 and 3 (2) of the Act of 1899, *ante*, pp. 135, 138. See also note (*b*) to s. 6, *ante*, p. 194.

(*c*) **Milk.**—Including cream and skimmed or separated milk (s. 16 (1), *ante*, p. 204).

(*d*) **Purveyor.**—Whether wholesale or retail (s. 16 (1), *ante*, p. 204).

(*e*) **Local Authority.**—For definition see s. 16 (4), *ante*, p. 205.

(*f*) **In Course of Transit.**—These words get rid of some of the difficulties pointed out in notes (*c*) and (*d*) to s. 3 of the Act of 1879, *ante*, pp. 109, 110.

(*g*) **Service of Notice.**—It is not clear how this is to be effected. The Act contains no special provision as to service, and therefore, on the face of it, personal service upon the clerk to the local authority would be necessary. But it may be held that s. 12 (3), *ante*, p. 198, has the effect

of incorporating s. 267 of the Public Health Act, 1875, and s. 128 of the Public Health (London) Act, 1891, in which case the notice may be served by post.

(*h*) **Corresponding Milking.**—Presumably a morning or afternoon milking, as the case may be.

(*i*) **Warranty Defence.**—As to this see s. 25 of the Act of 1875, *ante*, p. 76, and s. 20 of the Act of 1899, *ante*, p. 156.

(*k*) *Ante*, p. 69.

(*l*) **Admissibility of Certificate.**—As to this, see, farther, s. 21 of the Act of 1875, *ante*, p. 69, and ss. 19 and 22 of the Act of 1899, *ante*, pp. 152, 163, and the notes thereto.

(*m*) **Dairy.**—For definition see s. 16 (1), *ante*, p. 203.

FOURTH SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
49 & 50 Vict. c. 32.	The Contagious Diseases (Animals) Act, 1886.	In section nine, sub-sections (3) (5) and (6) so far as they relate to England.
54 & 55 Vict. c. 76.	The Public Health (London) Act, 1891.	Section twenty-eight.
62 & 63 Vict. c. 14.	The London Government Act, 1899.	In Part I. of the Second Schedule, the last paragraph in both columns.

APPENDIX.

ORDER AS TO REGISTRATION OF MARGARINE FACTORIES.

[22nd December, 1887.]

To the Owners and Occupiers for the time being of Manufactories of Margarine in England and Wales to which the Margarine Act, 1887, applies ;—

To the several Local Authorities under the said Act for the time being in England and Wales ;—

And to all others whom it may concern.

Whereas by section 9 of the Margarine Act, 1887 (which will come into operation on the 1st day of January, 1888), provision is made for the registration with the local authority of every manufactory of margarine (as defined by the said Act) in England and Wales from time to time in such manner as We, the Local Government Board, may direct ;

And whereas by section 13 of the said Act the expression "local authority" is defined as meaning "any local authority authorised to appoint a public analyst under the Sale of Food and Drugs Act, 1875," and the local authorities authorised to appoint a public analyst under the last-named Act are as follows, namely :—In the city of London and the liberties thereof the Commissioners of Sewers of the City of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis ; the court of quarter sessions for every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament, or otherwise, a separate police establishment :

NOW, THEREFORE, We, the Local Government Board, hereby order and direct as follows :—

ARTICLE 1.—Every owner or occupier of a manufactory of margarine in England and Wales who shall make application to the proper local authority for a certificate of registration under the said Margarine Act, 1887, shall, in his application, state the following particulars :—

(a) The name and address of the owner or occupier making the application.
(b) The situation of the manufactory.
(c) The name and address, or names and addresses, of the owner or owners, or occupier or occupiers carrying on the manufacture.

Every such application shall be signed by the person making the same, or by some one acting on his behalf.

ARTICLE 2.—If the application is in due form, the local authority shall cause the manufactory to be registered by entering in a book the particulars of the application for registration ; and thereupon a certificate, in the Form A. set forth in the Schedule hereto, shall be issued by the local authority to the person applying for the same.

ARTICLE 3.—Where any change occurs in the persons carrying on the manufacture, written notice thereof shall be given by the owner or occupier of the manufactory to the local authority, and the register shall thereupon be amended by making therein the requisite alteration, and an endorsement shall be made by the local authority on the certificate in accordance with the Form B. set forth in the said Schedule.

ARTICLE 4.—This Order shall come into operation on the First day of January, one thousand eight hundred and eighty-eight and shall remain in force until We shall otherwise direct.

SCHEDULE.

FORM (A).

Certificate under the Margarine Act, 1887.

(50 & 51 Vict. c. 29.)

This is to certify that the manufactory known as the situate at at which the manufacture of margarine is at present carried on by the owner [*or* occupier] thereof, has been duly registered by [*here insert the name of the local authority within whose District the manufactory is situate*] in accordance with the provisions of the Margarine Act, 1887, in that behalf, on the application of .

Dated this day of , in the year One thousand eight hundred and eighty- .

Signed

Clerk to the [*here insert name of Local Authority*].

FORM (B).

Endorsement on Certificate in case of Change in Persons carrying on the Manufacture.

This is to certify that has been duly registered as the owner [*or* occupier] carrying on the manufacture of margarine in the within-named manufactory in the place of .

Dated this day of , in the year One thousand eight hundred and eighty- .

Signed

Clerk to the [*here insert name of Local Authority*].

Given under the Seal of office of the Local Government Board, this Twenty-second day of December, in the year One thousand eight hundred and eighty-seven.

(L.S.)

CHAS. T. RITCHIE,
President.

HUGH OWEN.
Secretary.

[See also the next Order, and Circular Letter of the Local Government Board dated 27th February, 1900, *post*, p. 245.]

ORDER AS TO REGISTRATION OF MARGARINE FACTORIES, ETC.

[26th February, 1900.]

To the OWNERS and OCCUPIERS for the time being of MANUFACTORIES of, and to the WHOLESALE DEALERS in, MARGARINE or MARGARINE-CHEESE in ENGLAND and WALES;—

To the several Local Authorities under the Margarine Act, 1877, and the Sale of Food and Drugs Act, 1899, for the time being in England and Wales;—

And to all others whom it may concern.

WHEREAS by section 9 of the Margarine Act, 1887 (hereinafter referred to as "the Act of 1887"), provision was made for the registration of every manufactory of margarine in England and Wales by the owner or occupier thereof with the local authority from time to time in such manner as We, the Local Government Board, might direct;

And whereas by an Order dated the 22nd day of December, 1887 (hereinafter referred to as "the Order of 1887"), We directed the manner of registration under the Act of 1887 of every such manufactory of margarine;

And whereas by section 5 of the Sale of Food and Drugs Act, 1899 (hereinafter referred to as "the Act of 1899"), it is enacted that the provisions of the Act of 1887, as amended by the Act of 1899, shall extend to margarine-cheese as defined by that Act, and shall apply accordingly with the substitution of "margarine-cheese" for "margarine."

And whereas by sub-section (4) of section 7 of the Act of 1899 it is enacted that the provisions of section 9 of the Act of 1887 relating to registration of manufactories shall extend to any premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on:

NOW, THEREFORE, We, the Local Government Board, hereby order and direct as follows:

ARTICLE 1.—This Order shall come into operation forthwith, and shall remain in force until We shall otherwise direct; and the Order of 1887 is hereby rescinded:

Provided that in every case where a manufactory of mar-

garine, or an owner or occupier carrying on the manufacture of margarine has been duly registered, and such registration has effect at the date of this Order, such registration shall, notwithstanding the rescission of the Order of 1887 but subject to the provisions of Article 4 of this Order, continue to have effect: Provided also, that any book which prior to the date of this Order has been used by a local authority in pursuance of the Order of 1887 for the purposes of registration shall, so far as such book contains any entry applicable to any such case as aforesaid, be deemed to be part of the register of the local authority for the purposes of this Order.

ARTICLE 2.—Every owner or occupier of a manufactory of and every wholesale dealer in margarine or margarine-cheese in England and Wales who shall make application to the proper local authority for a certificate of registration under the Act of 1887 and the Act of 1899, or under either of the said Acts, shall, in his application, state the following particulars:

(a) The name and address of the owner or occupier or wholesale dealer making the application.
(b) The situation of the manufactory, or of the premises wherein the business of the wholesale dealer is carried on.
(c) The name and address, or names and addresses, of the owner or owners, or occupier or occupiers, or wholesale dealer or dealers, carrying on the manufacture or the business.

Every such application shall be signed by the person making the same, or by someone acting on his behalf.

ARTICLE 3.—If the application is in due form, the local authority shall cause the manufactory, or the premises, as the case may be, to be registered by entering in a book the particulars of the application for registration; and thereupon a certificate, in the Form A. set forth in the Schedule hereto, shall be issued by the local authority to the person applying for the same.

ARTICLE 4.—Where any change occurs in the persons carrying on the manufacture, or the business, written notice thereof shall be given by the owner or occupier of the manufactory, or by the wholesale dealer carrying on the business,

to the local authority, and the register shall thereupon be amended by making therein the requisite alteration, and an endorsement shall be made by the local authority on the certificate in accordance with the Form B. set forth in the said Schedule.

SCHEDULE.

FORM A.

Certificate under the Margarine Act, 1887
(50 & 51 Vict. c. 29),
[*or*] [*and*]
[*the Sale of Food and Drugs Act,* 1899
(62 & 63 Vict. c. 51)].

This is to certify that the [manufactory *or* premises, *or both, as the circumstances require*] known as , situate at , at which the [manufacture of *or* business of a wholesale dealer in, *or both, as the circumstances require*], [margarine *or* margarine-cheese, *or both, as the circumstances require*] is [*or* are] at present carried on by [*name of the owner or occupier*] the [owner *or* occupier] thereof, has [*or* have] been duly registered by [*the name of the local authority within whose district the manufactory or premises is or are situate*] in accordance with the provisions of the [Margarine Act, 1887, *or* Sale of Food and Drugs Act, 1899, *or both, as the circumstances require*] in that behalf, on the application of [*name of applicant.*]

Dated this day of , in the year One thousand nine hundred.

Signed

Clerk to the [*here insert name of local authority*].

FORM B.

Endorsement on Certificate in case of change in persons carrying on the manufacture or business.

This is to certify that has been duly registered as the [owner *or* occupier] carrying on the [manufacture of *or* business of a wholesale dealer in, *or both, as the circumstances*

require] [margarine *or* margarine-cheese, *or both, as the circumstances require*] in the within-named [manufactory *or* premises, *or both, as the circumstances require*] in the place of

Dated this day of , in the year One thousand nine hundred.

Signed

Clerk to the [*here insert name of local authority*].

Given under the Seal of Office of the Local Government Board, this Twenty-sixth day of February, in the year One thousand nine hundred.

(L.S.)

HENRY CHAPLIN,
President.

S. B. PROVIS,
Secretary.

[See also Circular Letter of the Local Government Board, dated February 27th, 1900, *post*, p. 245.]

ORDER AS TO REGISTRATION OF BUTTER FACTORIES, ETC.

[28th December, 1907.]

To the OWNERS and OCCUPIERS for the time being of BUTTER FACTORIES, and of premises on which there is manufactured MILK-BLENDED BUTTER, and to the WHOLESALE DEALERS in MILK-BLENDED BUTTER in ENGLAND and WALES;—

To the several Local Authorities under the Margarine Act, 1887, the Sale of Food and Drugs Act, 1899, and the Butter and Margarine Act, 1907, for the time being in England and Wales;—

And to all others whom it may concern.

WHEREAS by section 9 of the Margarine Act, 1887 (hereinafter referred to as "the Act of 1887"), as extended by section 7 of the Sale of Food and Drugs Act, 1899 (herein-

after referred to as "the Act of 1899"), provision was made for the registration of every manufactory of margarine and of all premises wherein the manufacture of margarine or the business of a wholesale dealer in margarine is carried on in England and Wales with the local authority from time to time in such manner as We, the Local Government Board, might direct;

And whereas by section 1 of the Butter and Margarine Act, 1907 (hereinafter referred to as "the Act of 1907"), it is enacted that the provision aforesaid shall apply to butter factories and to any premises on which milk-blended butter is manufactured or on which the business of a wholesale dealer in milk-blended butter is carried on:

NOW, THEREFORE, We, the Local Government Board, hereby order and direct as follows:—

ARTICLE 1.—Every owner or occupier of a butter factory or of premises on which there is manufactured any milk-blended butter, or on which there is carried on the business of a wholesale dealer in milk-blended butter in England and Wales who shall make application to the proper local authority for a certificate of registration under the Act of 1887 as amended by the Act of 1899 and the Act of 1907, shall, in his application, state the following particulars:

(a) The name and address of the owner or occupier making the application;

(b) The situation of the factory, or of the premises on which the manufacture, or the business of the wholesale dealer, is carried on;

(c) The name and address, or names and addresses, of the owner or owners, or occupier or occupiers, or wholesale dealer or dealers, carrying on the manufacture or the business;

(d) Whether the premises are proposed to be registered as

(i) a butter factory; or

(ii) premises on which there is manufactured any milk-blended butter; or

(iii) premises on which there is carried on the business of a wholesale dealer in milk-blended butter.

The application shall be signed by the person making the same, or by someone acting on his behalf.

ARTICLE 2.—If the application is in due form, the local authority shall cause the factory, or the premises, as the case may be, to be registered by entering in a book the particulars of the application for registration; and thereupon a certificate, in the Form A. set forth in the Schedule hereto, shall be issued by the local authority to the person applying for the same.

ARTICLE 3.—Where any change occurs in the persons carrying on the manufacture, or the business, written notice thereof shall be given by the owner or occupier of the butter factory, or of the premises on which the manufacture of milk-blended butter or the business of a wholesale dealer in milk-blended butter, as the case may be, is carried on, to the local authority, and the register shall thereupon be amended by making therein the requisite alteration, and an endorsement shall be made by the local authority on the certificate in accordance with the Form B. set forth in the said Schedule.

SCHEDULE.

FORM A.

Certificate under the Margarine Act, 1887
(50 & 51 Vict. c. 29),
as amended by
The Sale of Food and Drugs Act, 1899,
(62 & 63 Vict. c. 51),
and
The Butter and Margarine Act, 1907,
(7 Edw. 7, c. 21).

This is to certify that the [factory *or* premises, *or both, as the circumstances require*] known as situate at at or on which the [manufacture of *or* business of a wholesale dealer in, *or both, as the circumstances require*], [butter *or* milk-blended butter, *or both, as the circumstances require*], is [*or* are] at present carried on by [*name of the owner or occupier*] the [owner *or* occupier] thereof, has [*or* have] been duly registered by [*the name of the local authority within whose district the manufactory or premises is or are situate*] in

accordance with the provisions of the Margarine Act, 1887, and the Butter and Margarine Act, 1907, in that behalf, on the application of [*name of applicant*].

Dated this day of , in the year One thousand nine hundred and .

Signed

Clerk to the [*here insert name of local authority*].

FORM B.

Endorsement on certificate in case of change in persons carrying on the manufacture or business .

This is to certify that has been duly registered as the [owner *or* occupier] carrying on the [manufacture of *or* business of a wholesale dealer in, *or both, as the circumstances require*], [butter *or* milk-blended butter, *or both, as the circumstances require*] at or on the within-named [factory *or* premises, *or both, as the circumstances require*] in the place of .

Dated this day of , in the year One thousand nine hundred and .

Signed

Clerk to the [*here insert name of local authority*].

Given under the Seal of Office of the Local Government Board, this Twenty-eighth day of December, in the year One thousand nine hundred and seven.

(L.S.)

JOHN BURNS,
President.

S. B. PROVIS,
Secretary.

REGULATION AS TO COMPETENCY OF ANALYST.

[7th March, 1900.]

To the several Local Authorities for the time being required by law to appoint a Public Analyst:
And to all others whom it may concern.

Whereas by the Sale of Food and Drugs Acts provision is made for the appointment by certain local authorities of persons to act as analysts of all articles of food and drugs, and every such appointment is made subject to the approval of the Local Government Board;

And whereas by sub-sections (1) and (5) of section 3 of the Sale of Food and Drugs Act, 1899 (hereinafter referred to as "the Act"), it is enacted as follows:

"(1) It shall be the duty of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst . . ."

"(5) Any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency as may from time to time be required by regulation framed by the Local Government Board."

And whereas by section 25 of the Act it is enacted as follows:

"In this Act unless the context otherwise requires—

. . . . .

"The expression 'local authority' means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, and the expression 'public analyst' means an analyst so appointed."

Now, therefore, We, the Local Government Board, in pursuance of the powers given to Us by sub-section (5) of section 3 of the Act, do hereby order that the following regulation shall have effect; that is so say,—

Every person appointed on or after the first day of January, one thousand nine hundred, to the office of public analyst shall furnish such proof (*a*) as We may deem sufficient of his competent skill in and knowledge of (a) analytical chemistry, (b) therapeutics, and (c) microscopy.

Such proof shall in every case comprise documentary

evidence (*a*) that such person holds the requisite certificate, diploma, licence, or document conferring the qualification or attesting his possession of the skill or knowledge to which the same applies, and granted or issued by any person or body of persons for the time being recognised by Us as competent to confer such qualification or to test such skill or knowledge. Such proof shall also comprise such further evidence as We may in any particular case require.

All such documentary evidence as is hereinbefore mentioned shall be furnished by such person to the local authority by whom he is appointed and shall be transmitted to Us by the local authority when applying for Our approval of the appointment:

Provided that nothing in this Regulation contained shall, in the case of any person who was appointed to the office of public analyst with our approval between the first day of January, one thousand eight hundred and ninety-one, and the date hereof, or of any person who is so appointed for the first time after such last-mentioned date, apply upon any subsequent appointment of such person to the said office.

Given under the Seal of Office of the Local Government Board, this seventh day of March, in the year One thousand nine hundred.

(L.S.)

HENRY CHAPLIN,
President.

S. B. PROVIS,
Secretary.

(*a*) **Proof of Skill—Documentary Evidence.**—For further information as to these, see Circular Letter from the Local Government Board, dated March 8th, 1900, *post*, p. 245.

SALE OF MILK REGULATIONS, 1901 (*a*).

The Board of Agriculture, in exercise of the powers conferred on them by section 4 of the Sale of Food and Drugs Act, 1899, do hereby make the following Regulations:—

MILK.

1. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less

than 3 per cent. of milk-fat, it shall be presumed (*b*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-fat, or the addition thereto of water.

2. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 8·5 per cent. of milk-solids other than milk-fat, it shall be presumed (*b*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

SKIMMED OR SEPARATED MILK.

[3. *Where a sample of skimmed or separated milk (not being condensed milk) contains less than 9 per cent. of milk-solids, it shall be presumed for the purposes of the Sale of Food and Drugs Act,* 1875 *to* 1899, *until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto o water* (*c*).]

EXTENT.

4. These Regulations shall extend to Great Britain.

COMMENCEMENT.

5. These Regulations shall come into operation on the first day of September, one thousand nine hundred and one.

SHORT TITLE.

6. These Regulations may be cited as the Sale of Milk Regulations, 1901.

In witness whereof the Board of Agriculture have hereunto set their Official Seal this fifth day of August, One thousand nine hundred and one.

(L.S.)

T. H. ELLIOTT,
Secretary.

[See also Circular Letter of the Board of Agriculture, dated December 28th, 1901, *post*, p. 247.]

(*a*) For an explanation of, and remarks upon, these Regulations, see Circular Letter from the Board of Agriculture, dated December 28th, 1901, *post*, p. 247.

(*b*) **Presumptions.**—These are of course capable of being rebutted. Milk below the standard is not necessarily adulterated, and milk above the standard is not necessarily genuine. See p. 23, *ante*, and remarks in Circular Letters dated December 28th, 1901, and February 14th, 1911, *post*, pp. 247, 268; and *Lamont* v. *Rodger*, [1911] Sess. Cas. (J.) 24.

(*c*) This regulation is repealed by the Regulations of 1912, *infra*.

SALE OF MILK REGULATIONS, 1912.

The Board of Agriculture and Fisheries, in exercise of the powers conferred on them by section 4 of the Sale of Food and Drugs Act, 1899, do hereby make the following Regulations :—

SKIMMED OR SEPARATED MILK.

1. Where a sample of skimmed or separated milk (not being condensed milk) contains less than 8·7 per cent. of milk-solids other than milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907, until the contrary is proved, that the milk is not genuine, by reason of either the addition thereto of water, or the abstraction therefrom of milk-solids other than milk-fat (*a*).

REVOCATION OF EXISTING REGULATION.

2. Regulation 3 of the Sale of Milk Regulations, 1901, is hereby revoked, but not so as to affect the validity of any certificate of analysis given before the commencement of these Regulations or any legal proceedings in respect of any sample to which any such certificate relates.

COMMENCEMENT.

3. These Regulations shall come into operation on the First day of September, One thousand nine hundred and twelve.

EXTENT.

4. These Regulations shall extend to England and Wales.

SHORT TITLE.

5. These Regulations may be cited as the Sale of Milk Regulations, 1912.

In witness whereof the Board of Agriculture and Fisheries have hereunto set their Official Seal this twenty-ninth day of June, One thousand nine hundred and twelve.

T. H. ELLIOTT,
Secretary.

(*a*) This regulation is not *ultra vires* (*Gordon* v. *Love*, [1911] Sess. Cas. (J.) 75; 48 Sc. L. R. 590).

SALE OF MILK (IRELAND) REGULATIONS.

In Ireland Regulations similar to those set out above have been made by the Department of Agriculture and Technica Instruction for Ireland.

SALE OF BUTTER REGULATIONS, 1902.

The Board of Agriculture, in exercise of the powers conferred on them by section 4 of the Sale of Food and Drugs Act, 1899, do hereby make the following Regulations:—

1. Where the proportion of water in a sample of butter exceeds 16 per cent. it shall be presumed (*a*) for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the butter is not genuine by reason of the excessive amount of water therein.

2. These Regulations extend to Great Britain.

3. These Regulations shall come into operation on the Fifteenth day of May, One thousand nine hundred and two.

4. These Regulations may be cited as the Sale of Butter Regulations, 1902.

In witness whereof the Board of Agriculture have hereunto set their Official Seal this twenty-second day of April One thousand nine hundred and two.

(L.S.)

T. H. ELLIOTT,
Secretary.

(*a*) **Presumption.**—See note (*b*) on p. 228, *ante*.

SALE OF BUTTER (IRELAND) REGULATIONS.

In Ireland Regulations similar to those set out above have been made by the Department of Agriculture and Technical Instruction for Ireland.

Specimen Form.] FORM OF ANALYST'S QUARTERLY REPORT.

THE SALE OF FOOD AND DRUGS ACT, 1875.

Report of the Public Analyst appointed for the of , upon the articles analysed by him under the above Act, during the quarter ending the .

Article submitted for analysis.	State whether the sample was submitted to the analyst by an officer acting under direction of a Local Authority, under section 13 of Act, and if so, the name of such authority.	Result of analysis; showing whether the sample was genuine or adulterated: and if adulterated, what were the nature and extent of the adulteration.	The sum paid in respect of the analysis.	Observations.

Total number of samples analysed during the quarter - - - - - - - -

Number adulterated - - - - - - - - - - - - -

(Signed)

Public Analyst.

(Date)

PUBLIC HEALTH (MILK AND CREAM) REGULATIONS, 1912.

[1st August, 1912.]

(NOTE.—These Regulations are made and enforced under the Public Health Acts and not under the Sale of Food and Drugs Acts. The provisions of the last-mentioned Acts do not apply to them, except to the very limited extent mentioned in Regulation 7. In particular, it should be noted (1) that the penalty is under the Public Health Act, 1896 (see the "Notice" at the end of the Regulations), (2) that the certificate is not evidence, and the analyst must be called as a witness, and (3) that the defendant cannot insist upon the third part of the sample being sent to the Government Laboratory.)

To the several LOCAL AUTHORITIES in ENGLAND and WALES for the time being authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907;—

To Officers of Customs and Excise;—

To the Principal Chemist of the Government Laboratories;—

To Medical Officers of Health;—

To Public Analysts;—

To Dairymen, and to Wholesale and Retail Dealers in Milk and Cream;—

And to all others whom it may concern.

WHEREAS by section 1 of the Public Health (Regulations as to Food) Act, 1907, it is enacted as follows:—

"(1) The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act, shall include the power of making regulations authorising measures to be taken for the prevention of danger arising to public health from the importation, preparation, storage, and distribution of articles of food or drink (other than drugs or water) intended for sale for human consumption, and, without prejudice to the generality of the powers so conferred, the regulations may—

"(*a*) provide for the examination and taking of samples of any such articles;

"(*b*) apply, as respects any matters to be dealt with by the regulations, any provision in any Act of Parliament dealing with the like matters, with the necessary modifications and adaptations;

"(*c*) provide for the recovery of any charges authorised to be made by the regulations for the purposes of the regulations or any services performed thereunder;

"(2) For the purposes of regulations made under this Act articles commonly used for the food or drink of man shall be deemed to be intended for sale for human consumption unless the contrary is proved.

* * * * *"

And whereas We, the Local Government Board, are empowered by Regulations made under the Public Health Act, 1896, and the enactments mentioned in that Act, to provide for the Regulations being enforced and executed by the officers of Customs and Excise, as well as by other authorities and officers, and sub-section 2 (a) of section 1 of the Public Health Act, 1896, requires that the Regulations shall be subject to the consent, so far as they apply to the officers of Customs and Excise, of the Commissioners of Customs and Excise;

And whereas in the exercise of Our powers under the Public Health (Regulations as to Food) Act, 1907, We, by the Public Health (First Series: Unsound Food) Regulations, 1908, made Regulations in relation to articles of food;

And whereas, for the prevention of danger arising to public health, it is expedient that such Regulations as are hereinafter set forth be made in relation to Milk and Cream;

And whereas the Commissioners of Customs and Excise have signified their consent to the said Regulations, so far as they apply to the officers of Customs and Excise:

NOW, THEREFORE, We, the Local Government Board, by this Our Order, and in the exercise of the powers conferred upon Us by the Public Health Act, 1875, the Public Health (London) Act, 1891, the Public Health Act, 1896, and the Public Health (Regulations as to Food) Act, 1907, and of

every other power enabling Us in that behalf, do make the following regulations, that is to say :—

PART I.

I. *Interpretation.*—In these Regulations, unless the contrary intention appears :—

(*a*) The expression "preservative substance" means any substance, preparation, or solution which when added to milk or cream is capable of retarding the onset of sourness or decomposition, or is capable of neutralising acidity (sourness) in milk or cream, and the expression "thickening substance" means sucrate of lime, gelatine, starch paste, or any other substance which, when added to cream, is capable of increasing its thickness :

Provided that neither cane nor beet sugar shall be regarded as a preservative or as a thickening substance ;

(*b*) The expression "milk" includes separated, skimmed, condensed and dried milk ;

(*c*) The expression "cream" means that portion of milk rich in milk-fat which has risen to the surface of milk on standing and has then been removed, or which has been separated from milk by centrifugal force ;

(*d*) The expression "preserved cream" means cream containing 35 per cent. or more by weight of milk-fat, to which has been added—

(i) boric acid, borax or a mixture of those preservative substances, or

(ii) hydrogen peroxide ;

(*e*) The expression "seller" includes any person who exposes or offers for sale, or has in his possession for the purpose of sale ;

(*f*) The expression "foreign" used in relation to milk, cream, or preserved cream means brought from a place situate elsewhere than in the United Kingdom, the Channel Islands, or the Isle of Man ;

(*g*) The expression "local authority" means any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, 1875

to 1907, and the expression "public analyst" means an analyst so appointed;

(*h*) The expression "Unsound Food Regulations" means the Public Health (First Series: Unsound Food) Regulations, 1908;

(*i*) Other expressions have the same meaning, *mutatis mutandis*, as in the Unsound Food Regulations.

II. *Commencement of Regulations.*—Subject as provided in sub-division (1) of Article V. hereof these Regulations shall come into operation on the First day of October, One thousand nine hundred and twelve.

PART II.

III. *Prohibition of Preservatives in Milk.*—(1) No person shall add, or order or permit any other person to add, any preservative substance to milk intended for sale for human consumption.

(2) No person shall sell, or expose or offer for sale, or have in his possession for the purpose of sale, any milk to which any preservative substance has been added in contravention of the provisions of sub-division (1) of this Article.

IV. *Restriction on the use of Preservatives in Cream.*—(1) No person shall add, or order or permit any other person to add—

(*a*) any thickening substance to cream or preserved cream;

(*b*) any preservative substance to cream containing less than 35 per cent. by weight of milk-fat;

(*c*) to cream containing 35 per cent. or more by weight of milk-fat any preservative substance other than—

(i) boric acid, borax or a mixture of those preservative substances; or

(ii) hydrogen peroxide;

in any case in which the cream is intended for sale for human consumption.

(2) No person shall sell, or expose or offer for sale, or have in his possession for the purpose of sale, any cream to which any thickening substance or any preservative substance has been added in contravention of the provisions of sub-division (1) of this Article.

V. *Declaration of Preservatives in Cream.*—(1) Every seller of preserved cream shall, in every advertisement, price list, or trade list which is used in connection with the sale of preserved cream for human consumption, describe that article as preserved cream, and in no such document shall any words be contained which might imply that the preserved cream is cream to which a preservative substance has not been added.

The provision in this sub-division of this Article shall come into operation on the First day of January, One thousand nine hundred and thirteen.

(2) No seller of preserved cream shall deposit for sale in any place, or dispatch or deliver to any purchaser, or to any other person, any receptacle containing preserved cream intended for human consumption unless the receptacle is labelled in the manner prescribed in the Schedule to these Regulations, and unless, in the case of preserved cream containing boric acid, borax or a mixture of those preservative substances, the amount of those substances calculated as boric acid (H_3BO_3) is accurately stated as not exceeding the limit specified on the label in the manner prescribed in the said Schedule :

Provided that if in any public refreshment room, restaurant, shop, or other public premises preserved cream is delivered to a purchaser or other person for consumption on the premises, the receptacle containing the preserved cream shall not be required to be labelled in accordance with the foregoing provisions if there is placed in a conspicuous position in every room on the premises in which customers are served with refreshments a notice, printed in large and easily legible type, indicating that the cream supplied for consumption on the premises is preserved cream, or if a statement to that effect is conspicuously made on every bill of fare exhibited to customers, or if by some other adequate means similar intimation is publicly given.

VI. *Powers and Duties of Local Authority.*—The local authority shall enforce and execute the Regulations in this Part of this Order, and for this purpose shall authorise the making of inquiries and the taking of any other steps which may seem to them to be necessary for securing the due observance of the Regulations in their district :

Provided that before the local authority institute proceedings against any person for a contravention of any of the Regulations in this Part of this Order the local authority shall afford him an opportunity of furnishing an explanation in writing or otherwise as they may appoint, and shall duly consider any such explanation and all the circumstances of the case.

VII. *Samples.*—Any of the officers named in Section 13 of the Sale of Food and Drugs Act, 1875, may under the direction of the local authority appointing him procure for examination, in accordance with the provisions of Section 14 of that Act (as amended by subsequent legislation), so far as the same may be applicable, samples of milk or cream or preserved cream, or of any article resembling milk or cream, or of any substance which appears to be intended for addition to milk or cream ; and the owner or occupier of any premises on which there is deposited milk or cream or preserved cream intended for sale, or for preparation for sale, for human consumption, or the person having the custody thereof, shall afford to the officer or to any officer of the Local Government Board all reasonable facilities for entering the said premises for the purpose of taking samples or making inquiries or for any other purpose of the Regulations in this Part of this Order.

PART III.

VIII. *Restrictions on Importation.*—No person shall import into England and Wales :—

(*a*) any foreign milk to which any preservative substance has been added ;

(*b*) any foreign cream to which any thickening substance has been added ;

(*c*) any foreign cream containing less than 35 per cent. by weight of milk-fat to which any preservative substance has been added ;

(*d*) any foreign cream containing 35 per cent. or more by weight of milk-fat to which has been added any preservative substance other than—

(i) boric acid, borax or a mixture of those preservative substances ; or

(ii) hydrogen peroxide ;

(*e*) any foreign preserved cream which is not contained in a vessel or receptacle duly labelled in the manner prescribed in the Schedule to these Regulations.

IX. *Powers and Duties of Officers of Customs and Excise.*—(1) The officers of Customs and Excise shall enforce and execute the Regulations in this Part of this Order and for this purpose shall, in accordance with directions given by the Treasury after consultation with Us, take samples of consignments of imported milk or cream or articles resembling milk or cream.

(2) When any officer of Customs and Excise takes a sample in pursuance of sub-division (1) of this Article he shall divide it into not less than three parts, and send one part to the importer and one part to the principal chemist of the Government Laboratories and retain one part for future comparison.

(3) In any proceeding under this Part of this Order the certificate of the principal chemist of the Government Laboratories of the result of the analysis shall be sufficient evidence of the facts therein stated unless the defendant require that the person who made the analysis be called as a witness, and the defendant shall not be entitled to require the person who made the analysis to be called as a witness unless he shall, at least three clear days before the return day, give notice to the prosecutor that he requires his attendance, and deposit with the prosecutor a sum sufficient to cover the reasonable costs and expenses of his attendance, which costs and expenses shall be paid by the defendant in the event of his conviction.

(4) If in any case the officer of Customs and Excise is of opinion that an offence has been committed under this Part of this Order he shall communicate to Us for Our information the name of the importer and such other information as he possesses or may obtain as to the destination of the consignment.

PART IV.

X. *Determination of Differences.*—(1) If a difference arises in relation to any subject matter of, or to anything done under, these Regulations, the difference may, on the appli-

cation of all the parties affected, be referred to Us for determination.

(2) It shall be at Our option to determine any such difference as arbitrators or otherwise; and if We elect to determine the difference as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions shall apply, as if they were re-enacted in these Regulations, and in terms made applicable to Us, and to the determination of the difference.

(3) Where We elect to determine any such difference otherwise than as arbitrators, We may by Our Order determine the difference, and Our determination shall be final and conclusive.

(4) Every Order made by Us in pursuance of this Article shall have effect as if the Order were enacted in these Regulations.

XI. *Powers to be cumulative.*—All powers given by these Regulations shall be deemed to be in addition to, and not in derogation of any other powers conferred by Regulations under the Public Health (Regulations as to Food) Act, 1907; and those other powers may be exercised in the same manner as if these Regulations had not been made.

XII. *Short Title.*—These Regulations may be cited as "The Public Health (Milk and Cream) Regulations, 1912."

SCHEDULE.

REGULATIONS WITH RESPECT TO THE LABELLING OF PRESERVED CREAM.

1. Every receptacle containing preserved cream shall be labelled by the attachment thereto of an adhesive label, in this Schedule referred to as the "declaratory label."

2. Every declaratory label shall be in the form and contain the information indicated in Label I. or Label II. set out in this Schedule, as the case may require. Such information shall be printed in black type, of not less size than that shown in the said Label I. or Label II., upon a white ground in the centre of the declaratory label, and nothing else shall be printed on the declaratory label; except that in every

case in which Label I. is used the maximum amount per cent. of boric acid (H_3BO_3) contained in the preserved cream shall be stated in figures on the declaratory label.

LABEL I.

PRESERVED CREAM **containing** **BORIC ACID** **not exceeding** **per cent.**

LABEL II.

PRESERVED CREAM **(PEROXIDE).**

3. The size of the declaratory label shall be determined as follows :—

Capacity of Receptacle.	Size of Label.
	Inches. Inches.
Not exceeding 1 pint - -	¾ by 1¾
Exceeding 1 pint - - - - - -	3 by 5

4. The declaratory label shall be so attached to the receptacle that the whole of the label shall be visible and clearly legible, and the declaratory label shall not be overlapped by any other label or otherwise obscured.

5. The declaratory label shall not be affixed either over the mouth of the receptacle or beneath the receptacle.

6. Where on any receptacle containing preserved cream or on any wrapper or package in which such receptacle is enclosed, there appears any reference by label (other than the declaratory label) or otherwise to preserved cream contained therein, the preserved cream shall in every case be described as "preserved cream," the words "preserved" and "cream" being set out in letters of the same size.

7. No receptacle containing preserved cream shall bear or shall have attached on any label a trade description within the meaning of the Merchandise Marks Act, 1887, which shall be false or in any way likely to mislead a pur-

chaser as to the presence or utility of the preservative substance or as to the declaratory label or as to the Regulations.

Given under the Seal of Office of the Local Government Board, this First day of August, in the year One thousand nine hundred and twelve.

(L.S.)

JOHN BURNS,
President.

H. C. MONRO,
Secretary.

NOTICE.—The Public Health Act, 1896, provides by sub-section (3) of Section 1 that if any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under any of the enactments mentioned in that Act he shall be liable to a penalty not exceeding one hundred pounds, and, in the case of a continuing offence, to a further penalty not exceeding fifty pounds for every day during which the offence continues.

The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act is enlarged by the Public Health (Regulations as to Food) Act, 1907.

Date of publication in the London Gazette, 2nd August, 1912.

[See also Circular Letters from the Local Government Board dated July 11th, 1906, and October 27th, 1913, *post*, pp. 259, 275.]

CIRCULARS TO CLERKS TO LOCAL AUTHORITIES UNDER THE SALE OF FOOD AND DRUGS ACTS, 1875 TO 1899.

ANALYSTS' REPORTS.

LOCAL GOVERNMENT BOARD,
1st January, 1879.

SIR,—I am directed by the Local Government Board to call your attention to section 19 of the Sale of Food and Drugs Act, 1875, and to remind you that a copy of the reports made by public analysts for the several quarters of the year 1878 should be forwarded to the Board in the course of the present month.

I am to observe that, in some of the reports hitherto received, the Board find that analysts have given certain details of the analysis made, but have omitted to state which samples are, in their opinion, to be classed as genuine, and which as adulterated.

I am to refer to the enclosed specimen copy of the form in which the Board are desirous that the quarterly reports should be made, and which provides for showing—

(1) The description of article submitted for analysis ;
(2) Whether or not the sample was submitted to the analyst by an officer acting under direction of a local authority, under section 13 of the Act ;
(3) *Whether the sample was genuine or adulterated*, and, if adulterated, what were the nature and extent of the adulteration ;
(4) The sum paid in respect of the analysis ;
(5) The observations, if any, which the analyst may wish to make in reference to the analysis ;

and I am to state that the Board would be glad if this information were in future given with regard to each sample analysed.

I am to add that it would be convenient, for statistical purposes, if the quarterly reports were uniformly made up to the last day of March, June, September, and December respectively.

A copy of so much of the Board's annual report for 1877—1878, as relates to the reports of public analysts for the year 1877, with a numerical abstract of those reports, is enclosed for the information of the authority.

I am, Sir, your obedient Servant,
JOHN LAMBERT,
Secretary.

[NOTE.—See also Circular Letter of December 17th, 1913 *post*, p. 279.]

DIRECTIONS AS TO TAKING SAMPLES.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
26th February, 1894.

SIR,—I am directed by the Local Government Board t

state that they have received from the Commissioners of Inland Revenue a communication with reference to the portions of samples forwarded to the chemical officers of their department under the 22nd section of the Sale of Food and Drugs Act, 1875, from which it appears that in some instances the quantities have been so small as to cause difficulties in the operations of analysis; that in others the packing has been defective; and that in certain instances, in the case of perishable articles, there has been what has seemed an unnecessarily long interval between the original purchase and the receipt of the sample at Somerset House.

The insufficiency referred to is doubtless generally due to the smallness of the sample purchased under section 13 of the Act, but also, occasionally, to the fact that the parts into which, under section 14, the sample is divided are not made equal.

The chemical officers of the Inland Revenue suggest that the following rules should be observed in this matter:

1. The quantities of the samples purchased under section 13 should not be less, in the case of milk (*a*) than 1 pint; butter (*b*), $\frac{3}{4}$ of a lb.; lard, $\frac{3}{4}$ of a lb.; coffee, $\frac{3}{4}$ of a lb.; spirits, $\frac{3}{4}$ of a pint.
2. The division under section 14 should be made as nearly equally as possible, so that the portion reserved may be not less than one-third of the whole.
3. The reserved portion of such samples as butter (*b*) and lard should, as soon after purchase as possible, be placed, without paper (since paper acts as an absorbent), in a dry, wide-mouthed stoppered bottle or in an earthenware jar, securely corked so as to exclude the air.
4. The bottle used for the reserved portion of milk (*a* should be of such capacity that the milk may nearly fill it. (The use of bottles much too large for the quantity is apt to result in such a churning, if the samples are sent by railway, as to cause the separation of the fat.)
5. The corks used should be new and sound.

The Board request that the officers by whom samples are obtained for analysis may be instructed to have regard to these rules.

I am also to suggest that the officers referred to should be impressed with the importance of securing the utmost promptitude, both as regards the transmission of samples to the public analysts immediately after purchase, and as regards the subsequent stages of the case where legal proceedings are taken. It might be well, too, that the attention of the public analyst should be called to the desirability of completing his analyses as soon as practicable after receipt of the articles sent to him.

I am at the same time to state that the Board have received from the Commissioners of Inland Revenue a report (*c*) from their chief chemical officer showing the results of certain investigations made by him with regard to the composition of milk ; and I am to request that you will have the goodness to forward to the public analyst one of the copies of that report (*c*) which are herewith enclosed.

I am, Sir, your obedient Servant,

HUGH OWEN,
Secretary.

(*a*) **Milk.**—Further directions for taking samples of milk will be found in Circular Letters of the Board of Agriculture, dated December 28th, 1901, *post*, p. 247, and August 17th, 1903, *post*, p. 252.

(*b*) **Butter.**—Further directions for taking samples of butter will be found in a Circular Letter of the Board of Agriculture, dated July 13th, 1903, *post*, p. 251.

(*c*) **Report of Chief Chemical Officer.**—This was a report by Dr. J. Bell, C.B., F.R.S., containing an elaborate investigation into the composition of the milk of 273 cows and the mixed milk of 55 dairies. Its result was to show that nearly the whole of the milk investigated came up to or exceeded the standard which has since been adopted by the Sale of Milk Regulations, 1901 (*ante*, p. 226). It is therefore deemed unnecessary to set out the report in full.

REGISTRATION OF MANUFACTORIES OF MARGARINE AND MARGARINE-CHEESE.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
27*th February*, 1900.

SIR,—I am directed by the Local Government Board to advert to their Order dated the 22nd day of December, 1887, issued under section 9 of the Margarine Act, 1887, directing the manner of registration of every manufactory of margarine in England and Wales by the owner or occupier thereof with the local authority.

In view of the Sale of Food and Drugs Act, 1899, which extends the provisions of the Margarine Act, 1887, as amended by that Act, to margarine-cheese and to the registration of premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on, the Board have deemed it expedient to rescind the order above-mentioned and to issue a fresh order, directing the manner of registration of manufactories of margarine or margarine-cheese, and of premises wherein the business of a wholesale dealer in margarine or margarine-cheese is carried on.

The new Order provides that where a manufactory of margarine, or an owner or occupier carrying on the manufacture of margarine, has been duly registered, and the registration has effect at the date of the Order, the registration shall, subject to the provisions of Article 4 of the Order, continue in force.

Copies of the Order are enclosed.

I am, Sir, your obedient Servant,
S. B. PROVIS,
Secretary.

The Clerk to the Local Authority.

PUBLIC ANALYSTS: REGULATION AS TO COMPETENCY.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
8*th March*, 1900.

SIR,—I am directed by the Local Government Board to draw attention to the provisions of sub-sections (1) and (5)

of section 3 of the Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51). The former sub-section provides that it shall be the duty of every local authority entrusted with the execution of the laws relating to the sale of food and drugs to appoint a public analyst, and the latter that any public analyst appointed under the Sale of Food and Drugs Acts shall furnish such proof of competency as may from time to time be required by regulation framed by the Board.

The Board have issued an Order, of which two copies are enclosed, prescribing the regulation which they have framed under the above enactment.

It will be observed that the regulation requires that every person appointed on or after the First day of January, 1900, to the office of public analyst shall furnish such proof as the Board may deem sufficient of his competent skill in and knowledge of (a) analytical chemistry, (b) therapeutics, and (c) microscopy; and the Order proceeds to indicate the nature of the documentary evidence to be comprised in such proof. Such evidence of competency is to be furnished by the public analyst to the local authority by whom he is appointed; and it is to be transmitted to the Board by that authority when applying for the Board's approval of the appointment.

In the case, however, of any person who was appointed to the office of public analyst with the approval of the Board between 1st January, 1891, and the date of the Order, or who is appointed to that office for the first time after the last-mentioned date, the regulation will not apply in the event of his subsequent appointment as public analyst.

As regards the reference in the Order to a person or body of persons whom the Board may from time to time recognise as competent to confer the requisite qualification or to test the skill or knowledge of which proof is required by the Order the Board may state that it would accord with their existing practice to accept as sufficient documentary evidence of the requisite qualification under the Acts, the diploma of fellowship or associateship of the Institute of Chemistry of Great Britain and Ireland, together with the certificate granted by the Institute after an examination, conducted by them on lines approved by the Board, in therapeutics, pharmacology, and microscopy.

The possession of a diploma as a registered medical practitioner is accepted as sufficient proof of competency in microscopy and therapeutics, and it would only be necessary that a medical practitioner appointed as a public analyst should furnish evidence of competent skill in and knowledge of analytical chemistry.

Evidence of skill or knowledge on the part of a candidate in respect of any of the qualifications referred to as requisite, which is tendered by an individual, must be from a person recognised as entitled to speak with authority as to proficiency in the particular qualification in question.

The term "local authority" is used in the Order with the meaning assigned to it by section 25 of the Sale of Food and Drugs Act, 1899, that is to say: "Any local authority authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts." The section also provides that "the expression 'public analyst' means an analyst so appointed."

I am, Sir, your obedient Servant,

S. B. PROVIS,

Secretary.

The Clerk to the Local Authority.

SALE OF MILK REGULATIONS.

BOARD OF AGRICULTURE,
4, Whitehall Place, London, S.W.,
28th December, 1901.

SALE OF FOOD AND DRUGS ACT, 1899.

(62 & 63 Vict. c. 51.)

SIR,—I am directed by the Board of Agriculture to bring under the notice of your local authority the following observations with reference to the Regulations relating to the sale of milk in Great Britain, which, in pursuance of the powers conferred upon the Board by section 4 of the Sale of Food and Drugs Act, 1899, were made by the Board on the 5th August, and came into operation on the 1st September, 1901.

The Regulations were as follows:

MILK.

1. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 3 per cent. of milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-fat, or the addition thereto of water.

2. Where a sample of milk (not being milk sold as skimmed, or separated, or condensed, milk) contains less than 8·5 per cent. of milk-solids other than milk-fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

SKIMMED OR SEPARATED MILK.

3. Where a sample of skimmed or separated milk (not being condensed milk) contains less than 9 per cent. of milk-solids, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, 1875 to 1899, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk-solids other than milk-fat, or the addition thereto of water.

In the Regulations the limits below which a presumption is raised that the milk is not genuine were necessarily fixed at figures lower than those which are usually afforded by genuine milk, in which the proportion of milk-fat and non-fatty solids very frequently exceeds the percentages specified above. It is therefore important that local authorities should keep steadily in view the possibility of the artificial reduction of the quality of natural milk to the official limits by the abstraction of cream, or the addition of separated milk, or of water, and arrangements should be made for the taking of samples and the submission of the same for analysis whenever the existence of malpractices of the kind is suspected. In this connection, it may be observed that the evidence given before the Milk Regulations Committee Cd. 491], tended to show that the practice of fraudulently

mixing separated milk with new milk has become increasingly prevalent, particularly in some of the larger towns.

Although the quality of genuine milk offered for sale will usually be well above the official limits of milk-fat and non-fatty solids, there may occasionally, and especially in certain seasons of the year, be cases in which a sample of genuine milk may fall below those limits. To meet cases of this kind it is suggested that in the absence of any special circumstances indicating that the case is a fraudulent one, the local authority might, in the first instance, call the vendor's attention to the analyst's report, and ask him whether he desires to offer any explanation, and if the explanation is one they are able to accept, they might, in the exercise of their discretion, refrain from the institution of proceedings or withdraw any summons which, in order to prevent the failure of proceedings, by reason of the time-limit imposed by the Act, it may have been necessary to take out. But it may be desirable that further samples of milk should be taken in such cases, in order that a satisfactory conclusion as to the character of the milk supplied may be arrived at.

Cream.

The Milk Regulations Committee reported that the evidence submitted to them went to show that it was a common practice to add gelatin to cream for the purpose of giving it a fictitious appearance of richness or thickness. Local authorities are urged to take steps to ascertain whether this form of adulteration is practised within their districts, and if a public analyst reports the presence of gelatin or other similar substance in a sample of cream, the local authority concerned should consider whether the case is one in which proceedings might not with advantage be instituted under section 6 of the Sale of Food and Drugs Act, 1875.

Collection and Retention of Samples.

It is desirable that, so far as may be found practicable, there should be uniformity of procedure in collecting and retaining samples of milk procured under the provisions of the Sale of Food and Drugs Acts, and the following recom-

mendations have been drawn up for the guidance of the local officials employed in this work :—

(1) The quantity to be purchased should not be less than one pint, except that it may be expedient to purchase only half-a-pint in cases where there is reason to believe that the object of the purchase would be defeated if a greater quantity were demanded.

(2) The division of the sample under section 14 of the Act of 1875, as amended by section 13 of the Act of 1899, should be made as equally as possible, so that the portion reserved by the purchaser may be not less than one-third of the whole.

(3) The bottle used for each divided part should have a narrow neck, and be of such capacity that the milk may nearly or quite fill it. The shape of bottle known as "Winchester" is strongly recommended, but in any case the bottles should have rounded sides in order to give security to the sample during transit by post or otherwise.

(4) Corks only should be used ; and these should always be new and sound, and fitting so tightly as to secure the contents without any aid from the wax which is subsequently used for sealing the sample. It is most desirable that the sealing should be carried out in such a way as to prevent any attempt to remove the cork. It is therefore recommended that the cork should be slit down to one-fourth of its length and the string drawn through and securely fastened round the neck, the ends being afterwards carried to the top of the cork and sealed thereon.

(5) Special attention should be given that the reserved portion of milk be kept in as equable and cool a temperature as possible, pending its production in court in instances where proceedings are taken ; and, if directed by the justices to be referred to the Government laboratory, it should be carefully packed so as to secure its safe transmission.

The Board would be obliged if you would take steps to bring this circular under the notice of your local authority, and they will be glad to forward you additional copies for distribution amongst the members of your local authority

and the officers concerned, upon being informed of the number you require.

I am, Sir, your obedient Servant,

T. H. ELLIOTT,
Secretary.

SAMPLES OF BUTTER.

BOARD OF AGRICULTURE,
4, Whitehall Place, London, S.W.,
13*th July*, 1903.

SIR,—I am directed by the Board of Agriculture to draw the attention of your local authority to the fact that samples of butter, alleged to contain water in excess of the proportion indicated by the Board in their "Sale of Butter Regulations, 1902," are frequently received at the Government Laboratory after the lapse of one or two months from the time that the samples were taken, and that subsequently to the date of purchase they have been kept by the inspector in the paper in which they were originally bought. Under these circumstances it is quite impossible for the Government Laboratory to obtain upon analysis figures representing the amount of water present at the time of purchase; and discrepancies between their results and those of the analysts on which the charge is raised are inevitable.

It is very desirable that, so far as may be found practicable, there should be uniformity of procedure in collecting and retaining samples of butter taken under the Sale of Food and Drugs Acts, and the following recommendations have been drawn up for the guidance of the local officials employed in this work:

(1) The quantity to be purchased should not be less than one pound, except that it may be expedient to purchase only half a pound in cases where there is reason to believe that the object of the purchase would be defeated if a greater quantity were demanded.

(2) The division of the sample into three parts should be made as equally as possible, so that the portion

reserved by the purchaser may be not less than one-third of the whole. It is desirable that each portion should consist of one piece only.

(3) The portions should *not* be wrapped in paper, but should be placed, without pressure, in dry and clean screw-capped bottles in such manner that the water present may be retained in the butter.

(4) The screw-capped bottle should be provided with a cork-lined metallic lid. The mouth should be as nearly as possible the full width of the bottle, and the cork lining of the lid should be firmly screwed down against the edge of the bottle.

(5) The bottle, labelled with the necessary particulars, should be enclosed in an envelope of stout paper which should be secured with the official seal.

(6) The reserved portion should be kept in a cool dark place pending its production in court in the event of proceedings being taken, and if directed by the court to be referred to the Commissioners of Inland Revenue it should be carefully packed in order to ensure its safe transmission to the Government Laboratory.

The Board would be obliged if you would take steps to bring this circular under the notice of your local authority, and they will be glad to forward you additional copies for distribution amongst the members of your local authority and the officers concerned, upon being informed of the number your require.

I am, Sir, your obedient Servant,

T. H. ELLIOTT,
Secretary.

[See also Circular Letter of the Local Government Board, dated February 26th, 1894, *ante*, p. 242.]

DECOMPOSITION OF MILK SAMPLES.

BOARD OF AGRICULTURE,
4, Whitehall Place, London, S.W.,
17*th August*, 1903.

SIR,—I am directed by the Board of Agriculture to acquaint you, for the information of your local authority,

that the fact that samples of milk referred to the Government Laboratory under the provisions of the above Acts are invariably sour when received has occasionally given rise to inquiries, by magistrates' clerks and others concerned with the working of the Acts, as to the practicability of making a satisfactory analysis of sour milk, with a view of substantiating or disproving an allegation that the milk has been mixed with water, or that fat has been abstracted from it.

It therefore appears desirable that the Board should state that, except in a limited number of exceptional cases to be hereafter referred to, there is no practical difficulty in accurately inferring the composition of the milk when fresh from the analysis of the milk when sour.

The change which takes place in a sample of milk kept from contact with air, as in a bottle nearly full of the sample, and fitted with a good sound cork sealed with wax, is, as a rule, comparatively slight. The causes and nature of this change have been carefully studied by many observers, and they have been found to be perfectly definite in character. Without going into details concerning the fermentative changes to which milk is liable, it may be stated that the changes which affect the analysis, and, therefore, the inference to be drawn from the results, are concerned with the non-fatty solids only, and more particularly with the milk-sugar. The milk-sugar gives rise, either proximately or remotely, to a variety of products, the most important of which are lactic acid, ethyl alcohol, and acetic acid; but it can be shown that the only quantitative determinations which need be made in order to determine the loss in the non-fatty matter by keeping are the proportion of alcohol, reckoned as proof-spirit, and the amount of free volatile acid, together with the ammonia derived from the alteration of the casein, or proteid substance, in the milk. The slight alterations in weight consequent on the hydrolysis and conversion of lactose into lactic acid, and the formation of certain so-called bye-products of alcoholic fermentations, are partly positive and partly negative in direction, but their joint effect is too small to have any appreciable influence on the result.

The entire correction, which, of course, is always additive

in the case of a properly preserved sample from three to six weeks old, is fairly constant, and may be said to range from 0·2 to 0·3 per cent. In a few cases it has been found to be as low as 0·1 per cent., and in very exceptional cases, as in badly-secured samples, or in bottles only partially filled, it has risen to 0·7 or 0·8 per cent.

If the fermentation has passed into the butyric acid stage, the amount of free acid is greatly increased, and owing to the separated casein it is sometimes impossible to get the sample into a proper and uniform condition for analysis. In such cases the Government Laboratory declines to proceed with the examination. Such a result, however, practically never happens in the case of samples which have been properly taken and kept by the inspectors pending the appeal to the Government Laboratory.

The details of the methods of analysis adopted in the Government Laboratory were fully inquired into by the committee which preceded the issue of the Sale of Milk Regulations in 1901, and are given in Appendix XXIX. to the minutes of evidence taken before the Departmental Committee on Milk and Cream Regulations [Cd. 484].

The following tables [Cd. 484, Appendix XXIX.] give the results of the analysis of a series of milks analysed in the fresh state and after the lapse of several weeks. The examination was carried beyond the time at which a milk would be referred to the Government Laboratory under the Food and Drugs Acts, but it will be seen that the changes can be accurately followed and allowed for. The comparison of the corrected non-fatty solids with the solids of the fresh milk shows that the variations are not greater than may occur in duplicate determinations of the constituents of a fresh milk.

WHOLE MILKS.

No.	Fresh Milk.		Kept Milk.			Total Loss.	
	Non-fatty solids.	Fat.	Time in days.	Non-fatty solids.	Fat.	Calculated.	Actual.
(1)	8·97	4·08	21	8·71	4·02	·20	·26
(1A)	8·97	4·08	27	8·74	3·97	·21	·23
(1B)	8·97	4·08	50	8·61	4·00	·34	·36
(1)	8·97	4·08	85	8·49	4·09	·49	·48
2	8·99	3·17	27	8·60	3·16	·35	·39
3	9·12	4·16	42	8·82	4·18	·33	·30
3A	9·12	4·16	102	8·88	4·18	·25	·24
4	9·02	4·72	41	8·56	4·65	·58	·46
5	9·02	3·28	52	8·76	3·25	·20	·26
5A	9·02	3·28	79	8·53	3·34	·49	·49
5B	9·02	3·28	93	8·35	3·27	·61	·67
6	9·13	4·49	57	8·88	4·35	·23	·25
8	9·52	4·06	74	9·25	3·92	·35	·27
9	9·27	4·07	77	8·91	4·06	·32	·36
10	9·11	4·19	91	8·24	4·14	·76	·87
11	9·34	4·07	91	9·01	4·01	·41	·33
12	8·42	3·70	91	8·14	3·69	·26	·28
13	8·83	5·32	91	8·56	5·20	·31	·27
14	9·20	3·98	91	8·80	3·83	·39	·40

MILKS TO WHICH APPROXIMATELY 10 PER CENT. OF WATER HAS BEEN ADDED.

No.	Fresh Milk.		Kept Milk.			Total Loss.	
	Non-fatty solids.	Fat.	Time in days.	Non-fatty solids.	Fat.	Calculated.	Actual.
1	8·14	3·44	14	7·96	3·41	·27	·18
(2)	8·14	3·44	30	7·81	3·40	·42	·33
3	8·24	2·79	38	7·88	2·78	·33	·36
4	8·24	2·79	38	7·73	2·76	·50	·51

SEPARATED MILKS.

No.	Fresh Milk.		Kept Milk.			Total Loss.	
	Total solids.	Fat.	Time in days.	Total solids.	Fat.	Calculated.	Actual.
1	9·66	·14	27	9·25	Not determined.	·22	·41
1A	9·66	·14	36	9·34		·13	·32
1B	9·66	·14	65	9·35		·26	·31
2	8·91	·09	28	8·62		·28	·2[illegible]
2B	8·91	·09	37	8·60		·20	·31
3	8·61	·13	30	8·33		·24	·28
3A	8·61	·13	37	8·29		·28	·32
3B	8·61	·13	91	7·93		·58	·68

SEPARATED MILKS TO WHICH APPROXIMATELY 10 PER CENT. OF WATER WAS ADDED.

No.	Fresh Milk.		Kept Milk.			Total Loss.	
	Total solids.	Fat.	Time in days.	Total solids.	Fat.	Calculated.	Actual.
1	8·18	—	21	7·86	Not determined.	·24	·32
1A	8·18	—	387	6·71		1·50	1·47
1B	8·18	—	388	6·64		1·56	1·54
1C	8·18	—	401	6·71		1·50	1·47
2	7·67	—	22	7·22		·33	·45
2A	7·67	—	387	6·24		1·49	1·43
3	7·76	—	73	7·11		·55	·65
4	7·80	—	185	6·22		1·59	1·58
4A	7·80	—	188	6·19		1·69	1·61

The Board would be obliged if you would take steps to bring this circular under the notice of your local authority and they will be glad to forward you additional copies for distribution amongst the members of your local authority

and the officers concerned, upon being informed of the number you require.

I am, Sir, your obedient Servant,
T. H. ELLIOTT,
Secretary.

[See also Circular Letter of the Local Government Board, dated February 26th, 1894, *ante*, p. 242.]

ADULTERATION AND ANALYSES OF MILK.

BOARD OF AGRICULTURE AND FISHERIES,
4, Whitehall Place,
London, S.W.,
16*th March*, 1905.

SIR,—I am directed by the Board of Agriculture and Fisheries to advert to their circular letter of the 28th December, 1901, of which a copy is herewith enclosed, and to inform you that they have received numerous representations from dairy farmers and others complaining of the institution of proceedings under the Sale of Food and Drugs Acts, 1875 to 1899, in cases in which, as is alleged, the deficiency of milk-fat or milk-solids as compared with the limits laid down in the Sale of Milk Regulations, 1901, was due to accidental causes and not to any fraudulent action on the part of the vendor.

In the circular letter above referred to, the Board suggested that in the absence of any special circumstances indicating the commission of fraud, the local authority might in the first instance call the attention of the vendor to the adverse report of the analyst and afford him an opportunity of submitting any explanation he might desire to offer on the subject. The Board further expressed the opinion that if the explanation were one which the local authority felt able to accept, they might, in the exercise of their discretion, refrain from the institution of proceedings, or withdraw any summons which it might have been necessary to take out in order to avoid the failure of proceedings, at the same time making arrangements for the taking of further samples of the milk supplied, in order that

a satisfactory conclusion as to its character might be arrived at.

The experience of the past three years has confirmed the propriety of the views expressed by the Board on the subject, and they would be glad to learn that your local authority have made arrangements to proceed on the lines suggested, and if not, that the matter will be further considered at an early date.

I am also to say that the Board think it very desirable that farmers, dairymen and all other cowkeepers should have samples of the milk of their cows tested from time to time, so that they may be able to watch the seasonal and other variations in the quantity of milk-fat contained in the milk, and by modifications in the feeding, housing, or time of milking, and if necessary by the disposal of animals giving milk of an exceptionally poor character, keep the quality of their milk at a satisfactory level. The Board have ascertained that with the object of assisting farmers thus to acquaint themselves with the character of their milk the various agricultural colleges and agricultural departments of university colleges, etc., are willing to determine for a fee of sixpence the percentage of milk-fat in any sample of milk which may be sent to them from the counties with which they are respectively associated. Detailed information as to the arrangements thus made is given in the Journal of the Board of Agriculture for March, 1905. The Board would be glad if your local authority would co-operate with them in the matter, and do what is possible to facilitate the testing of milk in the manner proposed.

The Board are satisfied that if the keepers of cows will from time to time test the quality of their milk for themselves, and if the local authorities will adopt some such arrangement as that above suggested for hearing what the vendor has to say for himself before taking the case into open court, any legitimate ground of complaint on the part of producers as to the administration of the law, so far as the adulteration of milk is concerned, will speedily be removed.

I am, Sir, your obedient Servant,

T. H. ELLIOTT,

Secretary.

PRESERVATIVES IN MILK.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
11*th July*, 1906.

SIR,—I am directed by the Local Government Board to request the attention of the council to the subject of the addition of preservatives to milk.

A serious objection to the use of preservatives in milk has been pointed out in the report of the Departmental Committee on Preservatives and Colouring Matters in Food who state that preservatives in milk "may be relied on to protect those engaged" in the milk traffic "against the immediate results of neglect of scrupulous cleanliness. Under the influence of these preservatives milk may be exposed without sensible injury to conditions which otherwise would render it unsaleable. It may remain sweet to taste and smell and yet have incorporated disease germs of various kinds, whereof the activity may be suspended for a time by the action of the preservative, but may be resumed before the milk is digested."

This Committee, after hearing evidence from milk traders, concluded that the addition of a preservative to milk is not necessary for the purposes of the milk trade, even in hot weather or where the supply of so large a place as London is concerned, and the Committee recommended that no preservatives should be added to milk.

In making this recommendation the Committee had special regard to evidence received as to two classes of preservative substances which, under various names, are frequently used as preservatives in milk, viz. (1) formalin (a 40 per cent. solution of formic aldehyde) and other preparations of formic aldehyde; and (2) boron preservatives (boric acid, borax, or mixtures of boric acid and borax). The Committee considered that the addition to milk of formalin or preparations of formalin, even when the amount which could be detected was minute, was objectionable, on account of the alterations effected by formalin in the character of certain of the constituents of milk and of its ability to interfere directly with digestive processes.

Although in the view of the Committee boron preserva-

tives might reasonably be employed in the case of certain foods, within defined limits and subject to a declaration as to their presence and amount, the Committee recommended their exclusion from milk altogether; partly for the reasons above indicated, and partly also in consideration of the immense importance of pure milk for the nutrition of infants, invalids, and convalescents, and of the comparatively large quantity of milk which may be taken, particularly by children, in comparison with the other foods in question. Moreover the Committe had evidence "pointing to an injurious effect of boracised milk upon the health of very young children."

Since the report of the Committee was made the Board have from time to time had before them further evidence on the subject, and this supports the conclusions of the Committee not only as to the objections to the use of preservatives on the ground of public health, but also as to the ability of milk traders to conduct their business without use of preservatives. Thus in certain boroughs in London and elsewhere in which milk samples are systematically tested for preservatives, the presence of preservatives in milk, at any time of the year, has been found to be exceptional; and there is evidence to show that a very large number of milk vendors conduct their business without the use of these substances, even where the milk comes long distances by rail.

In some districts action under the Sale of Food and Drugs Acts has been frequently and successfully taken in order to bring about the disuse of preservatives in milk. Proceedings instituted against vendors of milk containing preservatives have usually been taken under section 6 of the Sale of Food and Drugs Act, 1875. Conviction has followed, it being held that when the purchaser who asks for milk is supplied with milk plus a preservative he does not receive an article of the nature substance and quality demanded, and is prejudiced thereby.

The Board are of opinion that action under the Sale of Food and Drugs Acts in regard to preservatives in milk is desirable, and that this subject deserves attention from all authorities in England and Wales charged with the execution of these Acts.

In this connection the following suggestions are made for

adoption by the council where a similar procedure is not already followed :—

1. INFORMATION FROM PUBLIC ANALYSTS.

The Board suggest that public analysts should be requested—

(a) to record in their quarterly reports how many milk samples have been examined during the quarter with a view to ascertaining the presence of substances commonly in use as preservatives, and with what result ; and to draw the attention of the council to instances where the use of preservatives in milk other than boron preservatives and formalin have come under notice ;

(b) to report, on completion of analysis, the facts as to samples of milk which have been found to contain any added preservative.

2. ADMINISTRATIVE ACTION WHERE PRESERVATIVES IN MILK ARE REPORTED.

The Board would suggest that the council should notify to milk traders, by circular or otherwise, that action will be taken under the Sale of Food and Drugs Acts in instances where preservatives are reported in milk.

Subject to this being done, and to exceptional cases of the kind referred to under the heading numbered 3 below, the Board consider that when the presence of any added preservative is reported in a sample of milk taken in accordance with the provisions of the Sale of Food and Drugs Acts, the case should in ordinary circumstances be regarded as one for the institution of proceedings under those Acts.

3. DECLARATION AND NOTICES.

The Board think it desirable to draw attention to cases in which the vendor of the milk, with the object of escaping liability under section 6 of the Sale of Food and Drugs Act, 1875, declares to the purchaser by means of a notice, label or otherwise that he does not sell "milk" as such, or that its quality in regard to preservatives or other constituents is not guaranteed, or that it contains some added preservative.

The Board would suggest the desirability of frequent sampling in cases where "milk" is sold subject to declarations of the kind, with a view to ascertaining the condition of such milk in regard to preservatives.

The nature of the declaration made should in all cases be carefully recorded by the officer taking the sample, and should also be reported to the analyst when the sample is transmitted for analysis.

Where preservatives are reported in milk thus sold, the question will arise whether, in view of the nature and quantity of the preservatives added, it can be considered that the article has been rendered injurious to health, or that the purchaser has been prejudiced, to an extent which would justify the institution of proceedings under section 3 or section 6 of the Sale of Food and Drugs Act, 1875, notwithstanding the declaration made at the time of purchase.

This question is not without difficulty in view of the general objection to the employment of any preservatives in milk referred to above.

As regards formalin and boron preservatives, however, the Board are advised that the presence in milk of formalin to an amount which is ascertained by examination *within three days of collecting the sample* to exceed 1 part in 40,000 (1 part in 100,000 of formic aldehyde) raises a strong presumption that the article has been rendered injurious to health, and that the purchaser has been prejudiced, in the above sense; and also that a similar presumption is raised where boron preservatives are present in milk to an amount exceeding 40 grains of boric acid per gallon.

It appears desirable that the addition of preservatives to skim milk, separated milk, and condensed milk, should be watched and controlled on similar lines.

Additional copies of this circular are enclosed for transmission to the public analyst, and for use by executive officers under the Sale of Food and Drugs Acts. The Circular will be placed on sale and copies can then be obtained from Messrs. Wyman & Sons, Limited, 109, Fetter Lane, Fleet Street, London, E.C., either directly or through any bookseller.

I am, Sir, your obedient Servant,

S. B. PROVIS,
Secretary.

The Town Clerk, *or*
The Clerk to the County Council.

[See also the Public Health (Milk and Cream) Regulations, 1912, *ante*, p. 232.]

CIRCULAR TO MAKERS IN GREAT BRITAIN OF CHURNS FOR THE CARRIAGE OF MILK BY RAIL.

BOARD OF AGRICULTURE AND FISHERIES,
4, Whitehall Place, London, S.W.,
27th February, 1907.

SIR,—I am directed by the Board of Agriculture and Fisheries to inform you that they are desirous of bringing the following observations under the notice of makers of churns for the carriage of milk by rail.

The Metropolitan Borough Councils Association in a report which was forwarded to the Board on the 19th June last, recommended that the use of sealed cans for the transit of milk should be enforced by statute, and at a conference held between the Public Health Committee of Wandsworth and dairymen and keepers of milkshops in that borough on the 17th July last, it was resolved :

"That the Board of Agriculture be urged to take steps to ensure the carriage of milk in sealed churns."

Both the report and the resolution have received the support of numerous metropolitan borough councils.

Two of the principal dairy farmers' associations have for several years recommended their members to send milk by rail, in sealed churns, to prevent pilfering.

The railway companies do not object to carry milk in sealed churns, provided the tare weight is stamped on the outside of the churn.

The withdrawal of milk from a churn may expose the consignor to risk of prosecution under the Sale of Food and Drugs Acts, for selling milk from which fat has been abstracted ; inasmuch as the cream may have risen before the withdrawal took place, or, as in some instances which have been brought under the notice of the Board, milk may have been stolen and water added to make up the quantity.

In these circumstances, the Board suggest that the following points should be kept in view in connection with the construction of milk churns :

(1) The churn should have the tare weight stamped on the outside.

(2) The lid of the churn should be constructed so as to facilitate sealing.

(3) The churn should be constructed so as to prevent, as far as possible, the removal of milk from the churn while sealed.

(4) The churn should be constructed so as to prevent water being added to the milk in the churn while sealed.

(5) The churn should be constructed so as to prevent dust or dirt from being blown or washed into the churn when the lid is affixed.

I am, Sir,
T. H. ELLIOTT.

ADULTERATION OF CREAM.

BOARD OF AGRICULTURE AND FISHERIES,
4, Whitehall Place,
London, S.W.,
1st October, 1909.

SIR,—I am directed by the Board of Agriculture and Fisheries to send to you the following information as to the adulteration of cream which they think may be of use to the officers of your local authority engaged in the execution of the Sale of Food and Drugs Acts.

A sample of an article apparently intended to increase the weight or bulk of the cream was recently purchased for one of the Board's officers and submitted to the Principal Chemist of the Government Laboratory. The report of the Principal Chemist on this sample is as follows :

"The examination of the sample gives the following results :

Water	83·46 per cent.
Proteins	11·90 „
Lactose	1·55 „
Milk-fat	1·26 „
Mineral matter . . .	1·28 „
Boric acid . . .	·30 „

"The substance would appear to consist of some form o albuminoid matter which has been worked into an emulsion

with milk and water. When received, the substance was thick and pasty, but in the course of two days it became decomposed, and was then of the consistency of thin cream.

"Cream to which this substance has been added is undoubtedly adulterated, and although the material does not appear to give any distinctive reaction, its detection in cream is not difficult if regard is had to the ratio between the non-fatty solids and fat, and particularly to the proportion of proteins in the non-fatty solids."

Two other substances apparently intended to be used for concealing the inferior quality of poor cream have also been recently procured by an officer of the Board and analysed by the Principal Chemist of the Government Laboratory.

One of these articles is described as follows in the report of the Principal Chemist:

"The sample consists of a solution of lime in cane sugar syrup. This substance under various names has been in use for some years, and is said to have a remarkable effect in increasing the thickness of the cream. In ordinary analysis its presence would not be suspected as, if used in the quantities recommended . . . it would increase the ash of the cream only ·04 per cent., and the total solids ·19 per cent. There is, however, no reason why an analysis directed specifically to the detection of cane sugar, and to the estimation of the relative proportion of lime in the ash, should not reveal the presence of this substance. Its use, even in these small quantities, gives a fictitious value to cream."

The other article was of the same character, and is described as follows by the Principal Chemist in his report:

"The sample consists of a solution of lime in cane sugar syrup, and is coloured with annatto colouring matter."

It is impossible to ascertain to what extent or in what localities the vendors of these adulterants may have succeeded in effecting sales to dairymen, and I am to suggest that samples of cream should be taken in the district of your local authority, and that the analyst should direct his attention to the question whether the samples of cream submitted to him contain adulterants of the nature above described.

There is also reason to suppose that gelatin and cornflour are used as adulterants of cream.

The Board will be glad to forward to you additional copies of this circular for distribution amongst the members of your local authority and the officers concerned on being informed of the number you require.

I am, Sir, your obedient Servant,

T. H. ELLIOTT,
Secretary.

MEMORANDUM AS TO SAMPLING.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
May, 1910.

The attention of the Local Government Board has lately been called to the following matters which bear upon the collection of samples under the Sale of Food and Drugs Acts.

SALE OF LARD SUBSTITUTES AS LARD.

In certain districts proceedings have recently been instituted under Section 6 of the Sale of Food and Drugs Act, 1875, and conviction has been obtained, in cases in which the purchaser who asked for lard was supplied with one of the numerous preparations of other fats which resemble lard and can be used as lard substitutes. In the cases referred to no sufficient steps had been taken by the vendor to declare the fact of the substitution to the purchaser.

Although similar practices have been brought to notice from time to time during past years, it is desirable now to direct special attention to them, on account of the increase which has lately taken place in the importation of lard substitutes into this country, and also of the marked difference which at present obtains between the cost of lard and of the substitutes in question.

In collecting samples with a view to the detection of such practices, advantage would probably be gained by arranging that suitable persons should act as agents for the sampling officer in connection with the purchase.

PRESENCE OF WATER IN LARD SUBSTITUTES.

Lard and the ordinary preparations of which lard substitutes are composed consist almost exclusively of fat. In a

recent instance at Liverpool, however, the public analyst reported on a sample of lard substitute which contained no less than 24 per cent. of water, and on proceedings being instituted against the vendor of the sample under Section 6 of the Sale of Food and Drugs Act, 1875, a conviction was obtained. It appears desirable that the extent to which water is present in representative samples of lard substitutes should be ascertained. The Board would be glad of information of the results of any examination which may be made for this purpose, and of any action which is taken in cases where the presence of water in lard substitutes has been reported.

PRESENCE OF PARAFFIN IN LARD, LARD SUBSTITUTES AND MARGARINE.

Two samples of "cake" margarine, recently collected on importation, were ascertained to contain solid paraffin (melting point 55° C.), in amounts respectively equivalent to 10 and 2·3 per cent. of the margarine. In the County of Lancaster, during 1909, the public analyst reported on several samples of margarine in which a liquid paraffin was present, in amounts between 2 and 7 per cent., and in certain of these cases proceedings were instituted under Section 6 of the Sale of Food and Drugs Act, 1875, and convictions obtained. In the same county (and also in Liverpool), during the previous year, cases were reported by the public analyst in which solid paraffin, in amounts between 2 and 3 per cent., was present in samples which had been purchased as lard. In certain of these cases, also, proceedings were instituted and convictions obtained.

Although the Board have no reason to consider that this form of adulteration of margarine and lard is common, they would be glad to receive information as to the results, positive or negative, of any examination for the presence of paraffin which may be made by the public analyst when samples of these substances are submitted to him. It appears desirable that the institution of proceedings under the Acts should be considered whenever any such adulteration is reported. Paraffin is devoid of any value as food and in some circumstances its presence in food appears liable to be deleterious to health.

It would be convenient to the Board to receive information on the above matters by means of suitable notes in the public analyst's quarterly reports, or by the transmission to them of a copy of any special report which a local authority may receive on the subjects referred to.

SALE OF MILK REGULATIONS.

HOME OFFICE,
Whitehall,
14*th February*, 1911.

SIR,—I am directed by the Secretary of State to say that several cases of proceedings under the Sale of Food and Drugs Acts in respect of milk have been brought to his notice, in which the court appeared to have been under a misapprehension as to the effect of the Sale of Milk Regulations, 1901, and it has been suggested to him that it may be of use to magistrates to have a brief statement of the law on the subject.

Under the Regulations, a copy of which is enclosed, a presumption of adulteration or abstraction is raised by a deficiency of milk-fat or of other solids, but if it can be proved that the milk was sold as it came from the cow this presumption is rebutted. It should therefore be observed that the sale of milk containing less than 3 per cent. of milk-fat or less than 8·5 per cent. of other milk-solids does not necessarily constitute an offence: the proof of the deficiency throws on the defendant the *onus* of showing by direct and positive evidence that the milk was sold as it came from the cow.

Milk, though sold as it came from the cow, may, nevertheless, be so seriously deficient in milk-fat as not to be of the quality demanded, in which event it appears from the decisions given by the High Court in the cases of *Smithies* v. *Bridge*, [1902] 2 K. B. 13, and *Wolfenden* v. *McCulloch* (1905), 69 J. P. 228, that the vendor may be charged and convicted under section 6 of the Sale of Food and Drugs Act, 1875.

I am, Sir, your obedient Servant,
EDWARD TROUP.

INADEQUATE PENALTIES.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
18*th March*, 1912.

SALE OF FOOD AND DRUGS ACTS: PENALTIES.

SIR,—I am directed by the Local Government Board to inform you that the Secretary of State for the Home Department has recently drawn the attention of Justices of the Peace to the Home Office circular of the 24th July, 1902, on the subject of the inadequate penalties which are often imposed by them for breaches of the Sale of Food and Drugs Acts.

The Board have received many representations on the same subject, and they think it desirable that local authorities concerned in the enforcement of the Acts should be acquainted with the Home Office circulars, a copy of which is enclosed, for use in cases in which it is desirable to press for heavy penalties.

It will be observed that the second paragraph of the circular of 24th July, 1902, refers to particulars of the number of small fines inflicted in respect of offences under the Acts committed during the year 1900. Statistics in the Board's possession for the following ten years show that the proportion of penalties not exceeding 10*s.* still remains very high, the proportion which such fines bear to the total number, which was 28½ per cent. in 1900, being nearly 28 per cent. in 1910.

I am, Sir, your obedient Servant,
F. J. WILLIS,
Assistant Secretary.

HOME OFFICE,
Whitehall,
10*th January*, 1912.

SIR,—I am directed by the Secretary of State to say that, in consequence of representations recently received from local authorities charged with the enforcement of the provisions of the above Acts, he thinks it right to draw attention to the Home Office circular of the 24th July, 1902, which

will be found reprinted overleaf. Later figures obtained by the Local Government Board in connection with this subject demonstrate the large proportion of cases still occurring under these Acts in which penalties are imposed of such a small amount as to suggest that the offence is regarded as being of an altogether trivial character. The Secretary of State will therefore be glad if you will bring the circular to the notice of your justices with a view to securing careful consideration of the adequacy of the penalties which they may decide to impose in cases under the Sale of Food and Drugs Acts.

I am, Sir, your obedient Servant,

EDWARD TROUP.

HOME OFFICE,

24th July, 1902.

SIR,—I am directed by the Secretary of State to inform you that a local authority charged with the enforcement of the provisions of the Sale of Food and Drugs Acts, has recently called his attention to the inadequate penalties imposed for breaches of these Statutes, and has represented that the efforts made to suppress the abuses against which the Acts are aimed are thereby greatly impeded. This representation is by no means the first of the kind which has been made to the Home Office, and the Secretary of State is informed by the Local Government Board that they have from time to time received many similar complaints from the local authorities entrusted with the administration of the Acts. The matter was considered by the Select Committee of the House of Commons which inquired into the subject of the Adulteration of Food Products in 1896, and their Report contains the following passage:

> "There has been a general agreement among the witnesses who have given evidence in reference to this subject that the penalties imposed in respect of offences under the Acts are for the most part trifling and quite insufficient to serve as deterrents. Your committee have been told that fines such as 10*s.* with 12*s.* costs are frequently inflicted."

Notwithstanding the attention, however, which was then

drawn to the matter, the Local Government Board inform the Secretary of State that in the year 1900, out of 2,673 fines imposed by magistrates under the Sale of Food and Drugs Acts, no less than 764 or over 28½ per cent. were of 10*s.* or less, while 193 penalties were under 5*s.*, and 118 were 1*s.* or even less than that sum.

It is unnecessary to point out the injurious consequences of the adulteration of articles of food or the large and sometimes enormous profits that accrue from the practice; and it is obvious that when the penalty on detection is trifling, it not only fails to be deterrent, but may even spread the mischievous impression that the offence is venial. The Secretary of State does not wish to be understood as suggesting that these considerations are lost sight of by your Bench, but the figures appear to be sufficient to show that the state of things to which the Parliamentary Committee called attention has not yet been set right; and he will be glad if you will bring the matter to the notice of the justices, in order that, as occasion arises, they may give special consideration to the question whether the penalties imposed in the cases that come before them are such as are likely to deter the offenders from repeating, and other persons from committing, the offence.

I am, Sir, your obedient Servant,
KENELM E. DIGBY.

MILK AND CREAM REGULATIONS.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
6th August, 1912.

SIR,—I am directed by the Local Government Board to advert to the Public Health (Regulations as to Food) Act, 1907 (7 Edw. 7, c. 32), under which the Board are empowered to make regulations authorising measures to be taken for the prevention of danger arising to public health from the importation, preparation, storage and distribution of articles of food or drink (other than drugs or water) intended for sale for human consumption. In connection with the powers thus conferred the Board have for some time had under

consideration and inquiry the danger to health which may be entailed by the addition of preservatives and other foreign substances to milk and cream and the importance of controlling such additions, and they have now made Regulations under that Act entitled "The Public Health (Milk and Cream) Regulations, 1912." Copies of an Order containing these Regulations are enclosed.

In making these Regulations due regard has been had to representations which the Board have received from local authorities under the Sale of Food and Drugs Acts, from representatives of the trades affected and from others concerned.

The Regulations are designed to secure that no preservative shall be added to milk, or to cream containing less than 35 per cent. by weight of milk fat, at any stage from the place of production to that of delivery to the purchaser. In the case of cream containing over 35 per cent. of milk fat, the addition of boric acid, borax or a mixture of these preservative substances, or of hydrogen peroxide, is not prohibited by the Regulations, but is subject to a system of declaration which is required to be followed by all persons dealing with such cream for the purpose of sale for human consumption. By this system (Part II. of the Regulations) it is intended that preserved cream as an article of commerce shall in all stages be differentiated from cream to which no preservative has been added. Further, Article IV. (a) prohibits the addition of any thickening substance to cream or preserved cream.

It will be seen that except as regards Part III. the duty of administering the Regulations has been placed upon those in England and Wales who are local authorities under the Sale of Food and Drugs Acts.

Existing arrangements for the collection and examination of milk samples under the Sale of Food and Drugs Acts can readily be extended so as to enable the council to receive such reports from the public analyst as are requisite. Arrangements will be required for the periodical examination of samples of cream for the purpose of ascertaining whether the requirements of the Order are being duly complied with.

In the case of any contravention of the Regulations steps

should be taken to ascertain the circumstances in which the default has arisen with a view to any necessary action. Article VI. requires that before the local authority institutes proceedings against any person for contravention of any of the Regulations in Part II. of the Order, the local authority shall afford him an opportunity of furnishing an explanation and shall consider such explanation and all the circumstances of the case. It should be observed that the proceedings here in question are those authorised by the Public Health (Regulations as to Food) Act, 1907, and the enactments referred to in the Notice at the foot of the Order.

It will be desirable that the medical officer of health should be instructed to exercise general supervision over the action taken in pursuance of these Regulations, and that the officer of the council who directs sampling under the Sale of Food and Drugs Acts should be instructed to confer with the medical officer of health and with the public analyst as to the details of procedure necessary to secure the observance of the Regulations in the area over which the council has supervision.

The Regulations will as regards their main provisions take effect on and after October 1st next, and as regards Article V. (1) on January 1st, 1913. The Board are anxious to secure uniformity of the administration of the Regulations and will be glad to have their attention drawn to any cases of difficulty which may hereafter arise.

Copies of the Regulations and of this Circular are enclosed for transmission to the medical officer of health and public analyst.

The Regulations and this Circular will be placed on sale, so that copies may shortly be obtained, either directly or through any bookseller, from Messrs. Wyman and Sons, Limited, Fetter Lane, London, E.C.

I am Sir, your obedient Servant,

H. C. MONRO,
Secretary.

[NOTE.—See also Circular Letter of 27th October, 1913, *post*, p. 275.]

BOARD OF AGRICULTURE AND FISHERIES,
4, Whitehall Place, London, S.W.,
20th August, 1912.

SIR,—I am directed by the Board of Agriculture and Fisheries to enclose herewith a copy of the Sale of Milk Regulations, 1912.

These Regulations amend the Sale of Milk Regulations, 1901, in so far as they relate to skimmed or separated milk, and replace the limit of 9 per cent. of total milk-solids, on which under Article 3 of those Regulations a presumption that the milk is not genuine is based, by a limit of 8·7 per cent. of milk-solids other than milk-fat.

Representations have been received from time to time from local authorities of districts where there is a trade in skimmed and separated milk that considerable practical difficulties arise in instituting proceedings in cases in which water has been added to skimmed milk, but, owing to the fact that the milk has been imperfectly skimmed, the total solids have not fallen below 9 per cent. Thus a sample containing 1·5 per cent. of fat and 7·5 per cent. of milk-solids other than milk-fat would probably contain over 12 per cent. of added water, but the total solids are up to the limit of 9 per cent. The present Regulations are intended to obviate these difficulties and to facilitate the prevention of the adulteration of skimmed milk with water.

The fixing of the percentage at 8·7 may result in some hardship in cases where the milk is imperfectly skimmed. Thus, if milk containing 3 per cent. of milk-fat and 8·5 per cent. of milk-solids other than milk-fat is imperfectly skimmed so that 1·5 per cent. of milk-fat remains, the proportion of milk solids other than milk-fat will rise only to 8·63 per cent., and the Board would suggest that this point should be taken into account by your local authority in considering the question whether they should institute proceedings on the presumption of adulteration based on the Regulations in cases where the deficiency of milk-solids other than milk-fat is slight and the skimmed milk contains a considerable proportion of milk-fat.

I am to enclose duplicate copies of this Circular and of the Regulations for transmission to the public analyst, and to

say that the Board will be glad to supply further copies of the Circular for distribution amongst the members of your local authority and the officers concerned in the administration of the Acts on being informed of the number you require.

I am, Sir, your obedient Servant,
T. H. ELLIOTT,
Secretary.

The Clerk to the Local Authority.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
27*th October*, 1913.

SIR,—I am directed by the Local Government Board to state that they have had under consideration the question of the manner in which the details of action taken under the Public Health (Milk and Cream) Regulations, 1912, can be most conveniently reported.

It will be remembered that by these Regulations a definite restriction has been placed on the use of preservatives by producers, retailers and others concerned in the milk and cream trade; no preservative is to be added to milk in any case, and no preservative is to be added to cream which is sold as cream. The Regulations, however, do not prohibit the sale of cream containing boric acid, borax, or a mixture of these preservative substances, or hydrogen peroxide, provided:—

(1) That it is sold, not as cream, but as preserved cream and

(2) That the vessel in which it is sold bears a declaration, in the prescribed form, showing the amount and nature of the particular preservative added.

The addition to cream of any other preservative substances than those mentioned is prohibited.

The object of the Regulations in regard to cream is to secure that preserved cream sold in compliance with the Regulations shall be distinguished at all stages of sale from cream to which no preservative has been added; this

distinction is important in the interests of the public generally, and particularly in the interests of infants and invalids.

In their circular letter of the 6th August, 1912, the Board suggested that the medical officer of health should be instructed to exercise general supervision over the action taken in pursuance of the Regulations, and that the medical officer of health, the officer who directs sampling under the Sale of Food and Drugs Acts, and the analyst, should confer as to the details of the procedure necessary to secure observance of the Regulations.

In amplification of that circular, I am to state that the Board consider that the council should look to their medical officer of health for reports on the administration of the Regulations. For the present it will suffice if a brief statement on the subject is included in the annual report of this officer.

In order to secure completeness and uniformity in this statement, and with a view to saving unnecessary correspondence, the Board think that there would be advantage if the statement were drawn up under the headings shown in the Appendix below, and they would be glad if, for purposes of tabulation, a copy could be forwarded to the Board shortly after the close of the year. If the information necessary for the preparation of this statement is not in the possession of the medical officer of health, the Board will be obliged if the council will give directions for him to be supplied with it.

It will no doubt generally be convenient that analyses which are made for the purpose of these Regulations should be made by the public analyst; and the Board recommend that this course should be adopted, special arrangements for this work being made where necessary. In any case it is essential that the medical officer of health should obtain information as to the results of the analysis.

The Board understand that it is now customary for public analysts in their reports on samples of milk submitted to them under the Sale of Food and Drugs Acts to state the results of examinations made to detect the presence of preservatives. Where this is done, the analyst's certificate will bring to notice cases where preservatives have been

added to milk and the council can then take the action in the matter which the Regulations require.

In the case of cream and preserved cream the analyst who receives a sample taken with a view to checking the observance of the Regulations should be informed precisely of the reason for which it has been taken, and the particular fact or facts which it is desired to ascertain by analysis. On one occasion, for example, the only analytical determination required may be the proportion of milk-fat in cream; on another, whether a preservative is present; or on a third, whether the statement on the label as to the nature and amount of added preservative is borne out by analysis. By adjustment of procedure in this way, and by consultations between the medical officer of health and the analyst, it is anticipated that much unnecessary analytical work can be avoided.

The Board would take this opportunity to remind the council that it is the duty of the local authorities specified in the Regulations to see that they are enforced by the administrative procedure authorised under the Regulations, and, should necessity arise, by the institution of proceedings under the public health enactments referred to in the note appended to the Regulations.

For administrative convenience the local authorities specified are those which also administer the Sale of Food and Drugs Acts, and the provisions of the Sale of Food and Drugs Act, 1875, relating to the taking of samples, has been applied to samples taken for the purpose of the Regulations. But the action taken under the Regulations is in other respects independent of the Sale of Food and Drugs Acts and does not affect the action which may be taken under those Acts.

While therefore it may be open to the council on consideration of the report of a public analyst on a sample of milk or cream to take action either under the Sale of Food and Drugs Acts, or under the Regulations, the Board consider that it is generally desirable that in cases in which it appears that the Regulations have been infringed such action as may be necessary should be taken under the Regulations rather than under the Sale of Food and Drugs Acts.

I am to request that the council will take this circular

into consideration with a view to making further arrangements, if any are necessary, so that the administration of these Regulations may be carried out and reported upon on the lines above indicated.

I am to add that, as stated in their circular of the 6th August, 1912, the Board are anxious to secure uniformity in the administration of the Regulations, and if difficulties are actually experienced by local authorities in the matter, the Board will be glad to be informed of the nature of the difficulties.

Copies of this circular are enclosed for transmission to the medical officer of health and public analyst. It will be placed on sale, so that additional copies may shortly be obtained, either directly or through any bookseller, from Messrs. Wyman & Sons, Ltd., Fetter Lane, London, E.C.

I am Sir, your obedient Servant,

H. C. MONRO,

Secretary.

APPENDIX.

HEADINGS OF REPORT OF ADMINISTRATION IN CONNECTION WITH THE PUBLIC HEALTH (MILK AND CREAM) REGULATIONS, 1912.

Report for the year ended 31st December, 19 .

1. *Milk ; and Cream not sold as Preserved Cream.*

——	(*a*) Number of samples examined for the presence of a preservative.	(*b*) Number in which a preservative was reported to be present.
Milk . .		
Cream .		

Nature of preservative in each case in column (*b*) and action taken under the Regulations in regard to it.

2. *Cream sold as Preserved Cream.*

(*a*) Instances in which samples have been submitted

for analysis to ascertain if the statements on the label as to preservatives were correct.

(i.) Correct statements made . .
(ii.) Statements incorrect . . .

Total . . .

(*b*) Determinations made of milk fat in cream sold as preserved cream.

(i.) Above 35 per cent. . . .
(ii.) Below 35 per cent. . . .

Total . . .

(*c*) Instances where (apart from analysis) the requirements as to labelling or declaration of preserved cream in Article V. (1) and the proviso in Article V. (2) of the Regulations have not been observed.

(*d*) Particulars of each case in which the Regulations have not been complied with, and action taken.

3. *Thickening substances.*—Any evidence of their addition to cream or to preserved cream. Action taken where found.

4. *Other observations, if any.*

[NOTE.—See also Circular Letter of 6th August, 1912, *ante*, p. 271.]

SALE OF FOOD AND DRUGS ACTS.

LOCAL GOVERNMENT BOARD,
Whitehall, S.W.,
17th December, 1913.

1. ANALYSTS' REPORTS.

SIR,—I am directed by the Local Government Board to call your attention to section 19 of the Sale of Food and Drugs Act, 1875, which requires that a certified copy of each quarterly report of the public analyst shall be transmitted to them, and to state that for the Board's purpose it is important that each report should be received by them

as soon as it has been submitted to the local authority. The Board have received nearly all the reports of public analysts for the first three quarters of 1913, and I am now to request that a copy of the report for the fourth quarter may be forwarded to them as early as practicable. It would greatly facilitate the Board's work if, with each quarterly report, they could be furnished with the information referred to in the following paragraphs :—

2. ADMINISTRATIVE ACTION IN REGARD TO SAMPLES REPORTED AGAINST.

The Board desire to receive information respecting the administrative action taken by local authorities in regard to each sample not reported as genuine by the public analyst, showing what legal proceedings have been instituted, the result of such proceedings, the respective amounts of the fine inflicted and the costs paid, the fines and costs being given separately in each case. Where prosecution has not been considered advisable, the Board would be glad to be furnished with a brief statement of the circumstances which have determined the decision, and the precise action which has been taken by the authority. In all cases the information should be given in such a form as to ensure the identification of the particular sample to which the information relates.

Where proceedings in respect of offences committed in any quarter are pending at the time of sending in the report, the Board would be glad to receive as early as practicable the necessary information as to the result of such proceedings.

3. ADMINISTRATIVE ACTION IN REGARD TO OFFENCES OTHER THAN ADULTERATION.

The Board desire to be furnished with particulars of offences other than adulteration, *e.g.*, breaches of the Margarine Act, 1887, and the Butter and Margarine Act, 1907, "obstructing officers in the discharge of their duty," "refusing to sell," etc. As regards such offences, information as to administrative action should be given similar to that asked for above with regard to adulterated samples.

4. ACTION UNDER ACTS OTHER THAN THE SALE OF FOOD AND DRUGS ACTS, 1875 TO 1907.

Where samples have been obtained without the observance of the prescribed formalities, prosecution of offenders cannot be undertaken under the Sale of Food and Drugs Acts. In such circumstances, some local authorities have successfully proceeded against offenders under other Acts, and where any such action has been taken with regard to either formally or informally taken samples, the Board would be glad to be informed of the circumstances and results.

5. FORM IN WHICH INFORMATION AS TO ADMINISTRATIVE ACTION CAN BE SUPPLIED.

The Board have prepared the following form of statement in which local authorities may conveniently furnish the information asked for in the foregoing paragraphs.

Name of district .

Administrative action regarding samples not reported to be genuine: Quarter ended .

Name of Article.	Identification Number given to the Sample in the Quarterly Report.	Result of Analysis.	If any legal proceedings were instituted under the Sale of Food and Drugs Acts, state result, showing fines and costs separately.	If any legal proceedings were taken under Acts other than the Sale of Food and Drugs Acts, state the result, showing fines and costs separately.	If no legal proceedings were instituted, state briefly the course adopted in regard to each Sample.	Information, if any, as to previous convictions.	Remarks on any point of special interest.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

Total number of samples not reported as genuine in the quarterly report .

Offences other than Adulteration.	
e.g.— Obstructing Inspector. Attempting to bribe Inspector. Refusing to serve Inspector. No name on milk-can. Condensed separated or skimmed milk unlabelled. Breaches of the Margarine Act, 1887. " " Butter and Margarine Act, 1907. &c., &c.	(*The nature of the offence should be stated, with the result of any legal proceedings taken by the local authority; showing fines and costs separately.*)

6. "APPEAL TO COW" SAMPLES.

In many districts, when a sample of milk is reported against by the analyst, a further sample is taken direct from the cow, with a view to comparison with the former sample. The Board do not include these appeal samples in their tabulated return, but they would be glad to have information regarding them with the quarterly reports, where they might be distinguished as "appeal to cow" samples.

7. PRESERVATIVES.

Having regard to the extent to which preservatives are added to food, the Board consider that analysts should examine for preservatives all samples which their experience leads them to believe may contain preservatives, and should state the result in their quarterly reports. Wherever possible, the amount of the preservative should be given.

8. INFORMAL OR TEST SAMPLES.

Samples collected without the formalities prescribed by the Sale of Food and Drugs Acts and analysed by the public analyst should be included in the quarterly reports, and whether they are genuine or adulterated, should be clearly distinguished as informally taken. If during the quarter

any such samples have been examined by the public analyst, and have not been included in his report, a statement regarding their nature and the result of their examination should be furnished.

The Board understand that, with a view to preliminary investigation, informal samples have been collected in some districts for examination, by rough sorting methods only, by the public analyst or by some other person. The Board would be obliged if they could be furnished with a list of the samples so dealt with, and with a short statement of the procedure adopted.

The Board also wish to receive observations by the public analyst, or by the medical officer of health or other officer charged with the direction of sampling under the Acts, regarding the practice of examining informal samples, and the use made by the local authority of the information thus obtained.

9. SAMPLES SENT TO ANALYST BY PRIVATE PURCHASERS.

Samples sent in by the general public under section 12 of the Act of 1875, should be separately indicated in the analysts' reports as "private samples."

10. SAMPLES SENT TO COUNTY ANALYSTS BY SANITARY AUTHORITIES.

It has come to the knowledge of the Board that samples submitted to county analysts by officers of sanitary authorities are sometimes excluded from the analysts' quarterly reports. In one county in 1910 over two hundred samples thus submitted were omitted. The Board request that county councils will instruct their analysts to enter all such samples in their quarterly reports in future, indicating from which sanitary authority the samples have been received.

11. FURNISHING INFORMATION TO SANITARY AUTHORITIES WITHIN THE JURISDICTION OF COUNTY COUNCILS.

In some instances sanitary authorities who have not the power to appoint public analysts supplement the work done by the county council under the Acts by instructing their officers to take additional samples.

It has been suggested to the Board by some of these sanitary authorities that it would tend to prevent overlapping, and would otherwise assist them if they could be supplied by the county councils of their respective counties with information as to the work done in their districts under the Sale of Food and Drugs Acts by officers of the county council.

The Board concur in the suggestion, and they would be glad if the county councils would give their officers the necessary instructions in the matter.

12. Annual or Special Reports.

The Board would in future be glad to receive, at an early date after they are available, copies of any annual or special reports made by public analysts which deal with the general working and administration of the Sale of Food and Drugs Acts in their districts, or which contain the results of special investigations as to particular food materials carried out on behalf of the local authority. The Board would also be glad to receive a copy of any reports on like matters which may be made by other officers of the authority.

13. Composition of Milk Samples.

In many instances information has been given by public analysts showing the composition of each sample of milk analysed. This information is valuable, and where it is available the Board desire to receive a copy.

14. Remuneration of Analyst.

Section 19 of the Act of 1875 requires the analyst to state in his quarterly report the sum paid in respect of each analysis. The required information may be given either at the beginning or at the end of each quarterly report, and it should include a note of the sum charged in respect of any analysis made by the analyst in his public capacity for private individuals or bodies.

15. Public Health (Milk and Cream) Regulations, 1912.

In the Board's circular of the 27th October last, they stated that local authorities should look to their medical

officers of health for reports on the administration of the above regulations, and they suggested certain headings under which the reports might be drawn up. If samples of cream are taken for the purposes of the Sale of Food and Drugs Acts the samples should be included by the analyst in his usual quarterly report, but if they are obtained for the purposes of the Public Health (Milk and Cream) Regulations, it will be convenient if a separate report is made by the analyst, a copy being forwarded by the authority to the medical officer of health to enable him to prepare his report. The Board would be glad if, for purposes of tabulation, the authority would instruct the medical officer of health to transmit to the Board in the month of January a copy of his report on the administration of the Regulations.

16. COPIES OF CIRCULAR FOR OFFICERS OF LOCAL AUTHORITIES.

Three additional copies of this circular are enclosed for transmission respectively to the public analyst and to the medical officer of health, and to any other officer who may be charged with the direction of sampling under the Acts. Additional copies can be obtained on application, and the Board request that an application be made if the number of copies supplied is not sufficient to provide a separate copy for each sampling officer.

I am, Sir, your obedient Servant,

F. J. WILLIS,

Assistant Secretary.

The Clerk of the County Council, *or*
The Town Clerk.

[See also Circular Letter dated 1st January, 1879, *ante*, p. 241.]

FORMS OF INFORMATION AND SUMMONS.

The following forms of information and summons for offences under the Sale of Food and Drugs Acts are often used by inspectors :—

Ordinary information for offences under section 6 of the Act of 1875 :—

In the county of .
Petty Sessional Division of .
The day of , One thousand nine hundred and .
The information of Inspector of Weights and Measures, of , who states that of in the county of , on the day of One thousand nine hundred and at in the said county, did unlawfully sell to him, the said to the prejudice of the purchaser, a certain (*article of food*) to wit (*milk*) which was not of the nature, substance and quality of the (*article of food*) demanded, but (*contained added water*) contrary to the form of the Statute in such case made and provided.

Taken before me

Justice of the Peace for the County of .

19 .

The summons is in a similar form.

Information where a sample has been taken in course of delivery under section 3 of the Act of 1879 :—

In the county of .
Petty Sessional Division of .
The day of one thousand nine hundred and
The information of Inspector of Weights and Measures, of who states that he, on the day of , 191 , did procure at the place of delivery, namely, in the county of , a sample of (*milk*) in course of delivery by of the seller to one the purchaser thereof in pursuance of a certain contract

of sale, and that suspecting such (*milk*) to have been sold by the said contrary to the provisions of the Sale of Food and Drugs Acts, the said did submit the same to the public analyst for analysis, when it was found to be not of the nature, substance and quality of the article demanded, but to have been unlawfully sold by the said to the prejudice of the purchaser inasmuch as it (*contained added water*) contrary to the form of the Statute in such case made and provided.

Taken before me

Justice of the Peace for the County of .

19 .

Summons where a sample has been taken in course of delivery under section 3 of the Act of 1879 :—

In the county of , Petty Sessional Division of .

To of .

Information has been laid this day, by , of , for that you on the day of 19 , at the parish of in the county and district aforesaid, did unlawfully sell to to the prejudice of the purchaser an article of food to wit (*milk*) [which was not of the nature, substance and quality of the milk demanded but *contained added water*] *or* [which when a sample thereof was procured at the place of delivery in pursuance of section 3 of the Sale of Food and Drugs Act, 1879, was found to be not of the nature, substance and quality of the milk demanded but to *contain added water*] contrary to the Statute in that case made and provided.

You are therefore hereby summoned to appear before the Court of Summary Jurisdiction, sitting at , in the said county on day, the day of , 19 , at the hour of in the forenoon to answer the said information.

Dated the day of , in the year of our Lord One Thousand Nine Hundred and

(L.S.)

Justice of the Peace for the County aforesaid.

NOTES ON SOME OF THE COMMONER FORMS OF ADULTERATION.

The following notes, which it is most convenient to insert here, treat of the various commodities named and their adulteration from a chemical, rather than a legal, point of view :—

BAKING POWDER AND SELF-RAISING FLOUR.

These compounds contain acid and alkaline chemicals and on the addition of water evolve carbon dioxide gas. The acid ingredient is frequently tartaric acid, or cream of tartar, or a mixture of those substances, but sometimes acid calcium phosphate is employed. This chemical is liable to contain an unduly large proportion of calcium sulphate, this proportion varying from 2 per cent. to as much as 50 per cent. or more. A large excess of calcium sulphate arises from the fact that acid calcium phosphate is made by treating bone ash with sulphuric acid. The whole subject is exhaustively discussed by Dr. J. M. Hamill in a report presented to the Local Government Board in 1911 (Food Reports, No. 13). Dr. Hamill's main conclusions are that acid calcium phosphate, used for the preparation of baking powder or self-raising flour, should not contain more than 10 per cent. of calcium sulphate. Self-raising flour commonly contains about 2 per cent. of acid calcium phosphate and such a compound should therefore not contain more than 0·2 per cent. of calcium sulphate. Several convictions have been recorded in police courts since the issue of Dr. Hamill's report in cases of self-raising flour containing 1 per cent. or a similar proportion of calcium sulphate.

In January, 1912, a vendor of baking powder was convicted in respect of the sale of baking powder which yielded only 1·86 per cent. of "total carbonic acid," the prosecution contending that it should yield at least 8 per cent. of "total" and 6 per cent. of "available" carbonic acid.

BEER.

According to the definition laid down in the Revenue Laws, the term *beer* includes ale, porter, spruce beer, and black beer (Inland Revenue Act, 1880 (43 & 44 Vict. c. 20),

s. 2), and the same is to be construed to extend to any liquor made or sold as a description of or as a substitute for beer, and in which, on analysis, there shall be found a greater proportion than 2 per cent. of proof spirit (Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 4).

Seeing that beer may now be prepared from any description of materials, it clearly becomes necessary to lay down a wide definition of the term *beer*.

In the last mentioned Act (48 & 49 Vict. c. 51), a clause occurs intended for the suppression of the adulteration of beer. By s. 8 it is enacted: (1) A brewer of beer for sale shall not adulterate beer, or add any matter or thing thereto (except finings for the purpose of clarification or other matter or thing sanctioned by the Commissioners of Inland Revenue) before the same is delivered for consumption, and any beer found to be adulterated or mixed with any other matter or thing (except as aforesaid) in the possession of a brewer of beer for sale shall be forfeited, and the brewer shall incur a fine of fifty pounds; (2) A dealer in or retailer of beer shall not adulterate or dilute beer, or add any matter or thing thereto (except finings for the purpose of clarification), and any beer found to be adulterated or diluted or mixed with any other matter or thing (except finings) in the possession of a dealer in or retailer of beer shall be forfeited, and he shall incur a fine of fifty pounds.

There have been comparatively few prosecutions for the adulteration of beer under the Sale of Food and Drugs Acts, and the few that have taken place have been generally for an excess of common salt. The question of a limit for the amount of salt in beer has been much discussed by analysts, but no general agreement has been arrived at on the subject. There are considerable difficulties in the way of fixing a reasonable limit on account of the variable quantities of common salt contained in the brewing waters as well as in the materials used, especially in refiners' syrups. It is well known that there are beers which contain, from one or other of these causes, considerably over 100 grains of common salt to the gallon, and the Select Committee of 1894—1896 in their Report stated that analysts differ as to the quantity of salt permissible in beer, but they did not make any recommendation on the subject.

The question of limit is in fact one that can only be decided with reference to the particular circumstances of each case. This is well shown by the fact that a special case (*Thorney* v. *Shute* (1893), unreported), which was stated by the Justices of Merthyr for the opinion of the High Court, was remitted to the justices by WRIGHT and MATHEW, JJ., with the following questions to be answered: (1) Was there such an excess of salt as to make the beer not of the (a) nature, (b) substance, (c) quality, of the article demanded? (2) Was there such an excess of salt as to be to the prejudice of the purchaser, as tending to increase thirst? (3) Was the amount of salt in excess of the quantity required for the production or preparation of beer as an article of commerce? It may, perhaps, be useful to add that in this particular case the justices answered the first two questions in the negative, while as to the third they gave it as their opinion that "any quantity may be used provided it is not injurious to health or added fraudulently."

At Lambeth Police Court a publican was summoned for selling beer containing 96 grains of common salt or chloride of sodium per gallon. It appeared from the evidence that sugar had been used in the brewing of the beer, and the analyst stated that this would account for the excess of salt. The magistrate fined the defendant, stating that if the salt had been directly added he would have inflicted the highest penalty (Analyst, Vol. II., p. 226).

At Worcester Police Court a publican was summoned for selling beer containing 98 grains of salt per gallon. It was proved on analysis that the water with which the beer was brewed contained only 10½ grains of salt per gallon. The defendant admitted putting in one farthing's worth of salt in 115 gallons of ale, stating that the person who instructed him in the art of brewing told him to put in this quantity of salt. The magistrates fined him 50*s*. and costs (Analyst, Vol. IV., p. 174).

At the Sessions House, Boston, a publican was summoned for selling beer adulterated with 60 grains of salt per gallon. Certificates of analysts for the defence were produced to the effect that the water with which the beer in question was brewed contained 30 grains of salt, and that between the quantity contained in the materials used in brewing, and the

concentration of the chlorides through the evaporation of the water by boiling, the amount of salt would be increased from 18 to 20 grains per gallon. On this evidence the magistrate dismissed the case (Analyst, Vol. IX., p. 72).

An appreciable quantity of arsenic has occasionally been found in beer. It is, of course, not intentionally added as an adulterant, but its presence is due to the use of glucose instead of sugar in brewing. The glucose is made by treating various starchy substances with sulphuric acid, and if pure ingredients are used the product is wholesome and may be used legitimately. But crude sulphuric acid usually contains arsenic, derived from the sulphur from which it is made, and if such acid is used in making brewing materials the arsenic is sure to find its way into the beer.

It has been said that arsenic may also be found in beer brewed entirely from malt and hops. The malt is often dried in a kiln over an anthracite fire, and if pyrites containing arsenic is present in the anthracite a certain amount of arsenic might be deposited on the malt and so find its way into the beer. But it is believed that if any arsenic is introduced in this way the quantity is so extremely small as to be of no practical importance.

In the case of addition of water to beer, the Inland Revenue authorities prosecute under the Revenue Acts and not under the Sale of Food and Drugs Acts.

BUTTER.

Butter is an article in respect of which much fraud is practised. Manufacturers of margarine have so perfected their processes as to be able to produce mixtures of various vegetable and animal fats which can scarcely be distinguished from butter by appearance, taste or smell, especially when the margarine is mixed with butter. According to a circular recently issued by the Local Government Board to boards of guardians there is no appreciable difference between the nutritive values of butter and margarine, and this holds good in spite of the fact that more vegetable oils and fats are being used nowadays than formerly in the manufacture of margarine. But, apart from any question of the wholesomeness of margarine, a purchaser who buys margarine under the name of butter is undoubtedly pre-

judiced because of the great difference in the price of the articles.

In determining whether a sample of butter is genuine or adulterated with foreign fat, analysts rely largely on the amount of volatile fatty acids found in the sample, the proportion in butter being much higher than that in margarine. Owing to the fact that the proportion of volatile fatty acids in genuine butter is not constant—that in Australian butter, for example, being higher than that in Siberian butter—it is possible to add to Australian butter a small proportion of foreign fat (with a percentage of volatile fatty acids less than that of genuine butter), and for the mixture to give the same figure for volatile fatty acids as would be given by genuine butter from Siberia or elsewhere. When, however, the proportion of margarine so mixed with butter is comparatively large, analysts have no difficulty in determining that a sample is adulterated.

By the Butter and Margarine Act, 1907, the maximum percentage of water in butter is fixed at 16. This figure is sometimes exceeded, especially if milk-blended butter is sold under the name of butter.

The Departmental Committee on Food Preservatives recommended in 1901 that boric acid in butter should not be used in a greater proportion than 0·5 per cent., that is to say, 35 grains per pound. Consequently, objection is not usually taken to boric acid if present in less than this quantity. There are, however, many experts who regard 0·5 per cent. of boric acid in butter as unnecessary and objectionable, and the tendency appears to be to reduce the proportion of boric preservative used. A proprietary preparation, containing an alkaline fluoride, has been advertised as a butter preservative.

CHEESE.

Exception is sometimes taken, naturally enough, to thick artificial rinds, composed of barytes and tallow, on Gorgonzola cheese. Other adulterants are fats other than milk-fat, and excess of water. There is no legal standard for the percentage of milk-fat in cheese, but prosecutions for deficiency of fat are not uncommon, the justices being asked in such cases to fix their own standard on the basis of the

expert and trade evidence before them. The percentage of milk-fat in cheese varies in different varieties of cheese. Cheddar cheese usually contains about 30 per cent. of fat Dutch cheese contains less, and Stilton cheese frequently more than that percentage.

A Cheshire bench in 1914 convicted under section 6 of the 1875 Act a vendor of Cheshire cheese containing only 17 per cent. of milk-fat, as they were of opinion on the evidence before them that Cheshire cheese must be made from practically whole milk and that cheese so made could not contain less than 24 per cent. of fat. The Cheshire county analyst stated that the proportion of fat in Cheshire cheese averaged about 30 per cent. In March, 1902, a Cambridge bench dismissed a summons in respect of Dutch cheese containing 10·83 per cent. of fat; the prosecution endeavoured to satisfy the bench that Dutch cheese should contain at least 16 per cent. of fat.

CHOCOLATE.

The cheaper varieties on the market often contain a very small proportion of ground cocoa nib, and largely consist of various added substances, such as starch and sugar, which are foreign to the cocoa plant. A conviction was obtained at the instance of the Westminster City Council in 1908 in respect of "milk chocolate" found to be not of the nature, substance and quality demanded, the article consisting of starch 6 per cent., fat 26·2 per cent. (mainly coco-nut oil), non-fatty solids 10 per cent., cane sugar and colouring 47·8 per cent. Here the proportion of cocoa matter other than husk was about 2·5 per cent. In a second case a conviction was obtained in respect of the sale of "broken chocolate" not of the nature, substance and quality demanded, the sample containing only 8 per cent. of cocoa matter, of which three-quarters was cocoa husk. After these cases had been heard, members of the British Chocolate Makers' Association, representing one section of the chocolate makers in Great Britain, unanimously pledged themselves to use in the production of chocolates not less than 10 per cent. of ground cocoa nib or 5 per cent. of cocoa essence produced entirely from the cocoa nib; but this resolution was afterwards rescinded.

Some experts hold that cocoa shell, starch other than natural cocoa starch, and fats other than natural cocoa-butter, ought not to be present at all in a confection which is sold as "chocolate." But this is a question on which expert and trade opinion is not unanimous. What is certain is that cocoa shell, added starch and added fats are frequently found in samples sold as chocolate.

According to the Committee on Food Standards in the United States and to a decision of the United States Department of Agriculture, "chocolate" means the mass obtained by grinding cocoa nibs without the removal of fat or other constituents except the germ, containing not more than 3 per cent. of ash insoluble in water, 3·5 per cent. of crude fibre, and 9 per cent. of starch, and not less than 45 per cent. of cocoa fat.

COCOA.

Powdered cocoa is commonly understood to mean the product obtained by grinding cocoa beans, freed from shell or husk and often deprived of a portion of the fat natural to the beans. In the so-called Dutch process cocoa is treated with an alkali or alkaline salt, usually a carbonate, and is then sometimes designated "soluble" or "solubilised" cocoa. There also exist some forms of commercial or prepared cocoa, the best known of which is perhaps that which is prepared by the addition to pure cocoa of some farinaceous substance and sugar.

Standards for cocoa and chocolate have been made in the United States (Food Inspection Decision, 136, United States Department of Agriculture) and a number of resolutions recommending certain standards have been arrived at, without the co-operation of British manufacturers, by an international congress of manufacturers of cocoa and chocolate (see *The Grocer*, September 9th, 1911, p. 651).

COFFEE.

The preparation of substitutes for coffee is legally recognised, and their mode of sale in a separate state or mixed with coffee is subject to stringent statutory regulations for revenue purposes. Chicory, like coffee, may be sold loose, and in any quantity, but a mixture of chicory and coffee

must be declared to the purchaser at the time of the sale either verbally or by a written notice or by a label. Other articles may be prepared and sold as substitutes for coffee or chicory, but they are not allowed to be sold alone or mixed with coffee or chicory except upon payment of a special duty under the following conditions imposed by section 6 of the Customs and Inland Revenue Act, 1882 (45 & 46 Vict. c. 41):

(1)—(a) "The article or substance or mixture shall be placed in packets, each containing one quarter of a pound or any number of quarters of a pound;

(b) "Each such packet shall have affixed thereto a label or labels (which shall not have been before used) denoting the proper amount of duty payable upon such packet according to the weight thereof;

(c) "Such label or labels shall be affixed so that the whole thereof shall adhere to the packet, and so that the packet cannot be opened without tearing or destroying the label or labels;

(d) "Where more than one label is affixed to any packet the labels shall be affixed so that every label shall be wholly or partially visible.

"Provided that each such packet containing, or purporting to contain, coffee with any other article or substance mixed therewith shall have affixed thereto a label, in manner hereinbefore provided, denoting in letters of not less size than the largest letters affixed to or imprinted on such label the proper name of the several articles or substances of which such mixture is composed."

CREAM.

Prior to the promulgation of the Public Health (Milk and Cream) Regulations, 1912 (see p. 232), the cream sold to the public in towns usually contained a boric preservative. For that reason, it was not then possible to state that the sale of such preserved cream under the name of "cream" constituted any offence under section 6 of the Sale of Food and Drugs Act 1875. The Regulations of 1912, however, while not purporting to create any standard for the purposes of the Sale of Food and Drugs Acts, have altered trade custom by requiring cream containing preservative to be labelled

"preserved cream," and have restricted the ordinary meaning of "cream" to cream which is free from preservative.

Up to the present, however, prosecutions under the Sale of Food and Drugs Acts in respect of preserved cream have for the most part been taken not under section 6 but under section 3 of the Act of 1875, for the offence of selling cream admixed with preservative so as to be injurious to health. In the case of *Cullen* v. *McNair* (72 J. P. 376), the High Court upheld a conviction on the ground that there was evidence on which the justices were entitled to find that cream containing 0·313 per cent. of boric acid was injurious to the health of children and invalids. In the case of *Whale* v. *Bennett*, heard at London Quarter Sessions in May, 1913, the justices, after hearing a mass of expert evidence, decided that cream containing ·3187 per cent. of boric acid (22·309 grains per lb.) was injurious to health and that the sale of such an article, even when it was labelled "preserved cream," was an offence under section 3.

With respect to the percentage of boric acid to be allowed, the Departmental Committee on Preservatives and Colouring Matters in Food recommended in 1901 that boric preservatives should not be allowed to exceed 0·25 per cent. expressed as boric acid. In a report to the Local Government Board (Food Reports, No. 10, 1909), Dr. J. M. Hamill suggests that the maximum percentage to be permitted should be 0·4 (28 grains per lb.) from May to October inclusive, and 0·25 (17½ grains per lb.) during the remainder of the year.

Other substances which have been known to be used as preservatives for cream include benzoates and salicylates, sulphites, hydrogen peroxide, a proprietary mixture containing sodium nitrite and formaldehyde, and a proprietary preparation containing 37 per cent. of potassium fluoride. References to the use and detection of these preservatives will be found in Dr. Hamill's Report (quoted above), Dr. G.W. Monier-Williams' Report to the Local Government Board (Food Reports, No. 17, 1912), and Dr. A. W. J. MacFadden's Annual Report to the Local Government Board on the work of inspectors of foods in 1912—13.

Various substances have been used for thickening cream or concealing inferior quality. These include gelatin, corn-

flour, a solution of lime in cane sugar syrup, and an emulsion of albuminoid matter with milk and water. These are more fully discussed in a circular issued to local authorities by the Board of Agriculture on October 1st, 1909.

A vegetable substitute for cream, containing 43 per cent. of "nut fats," was placed on the English market under a proprietary name in 1913.

DEMERARA SUGAR.

"Demerara sugar" is a term around which much controversy has raged in proceedings under the Sale of Food and Drugs Acts, and the difficulties of defining its meaning are increased by the fact that the process adopted in its production in the West Indies has altered more than once. At the present time, it is fairly generally agreed that the term must not be applied to beet sugar, but only to cane sugar. Strenuous efforts have been made on behalf of planters in the West Indies to insist that the term Demerara sugar applies only to cane sugar made in British Guiana or the neighbouring islands by what has been called the Demerara process.

The sugars originally made in Demerara were of the class called "muscovado," and were made by a process of boiling and crystallisation in open pans. Later, these open pans were largely superseded by vacuum pans, and the old-fashioned brown sugar began to give place to the more yellow "Demerara" crystals.

Other changes followed, and at the present time it would appear that the sugars made in Demerara may be divided into two distinct classes—a yellow sugar which goes into direct consumption, and a darker sugar which needs to be refined before being placed on the market.

Another complication is introduced by reason of the fact that a small proportion of chloride of tin was formerly used in the Demerara process of sugar refining for the purpose of fixing the natural colour of the product. But this practice has been largely, if not entirely, discontinued, and the use of an organic dye now appears to be more common.

In the case of *Anderson* v. *Britcher* (1914), 78 J. P. 65, the magistrate found that sugar which had been sold as Demerara sugar was cane sugar grown in Mauritius and coloured with an organic dye, and further that the term "Demerara

sugar" was now a generic term applicable to any sugar of the substance, kind and colour of the sugar in question wherever produced. The High Court refused to disturb these findings, but Avory, J., specially stated that he did not decide that cane sugar made anywhere could properly be described as Demerara sugar merely because it had a yellowish tint.

DRUGS.

There are no standards of quality laid down in the Acts for drugs, and they contain no provision making the British Pharmacopœia a standard for such drugs or medicines as are specified therein. A suggestion was made in 1879 before the Select Committee on the Amendment Bill (now the Act of 1879), that it would be desirable to incorporate with the Sale of Food and Drugs Acts, s. 15 of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121), which directs chemists to compound medicines of the British Pharmacopœia according to the formulæ therein, but the committee apparently did not see their way to adopt the suggestion. The proposal was again made to the Select Committee of 1894—1896 (p. 39 of Committee's Report), but they made no recommendation in their report on the subject.

The British Pharmacopœia, which is somewhat restricted in its scope, and is essentially intended to establish a uniform standard of strength and composition of drugs for the use of the medical profession in prescribing for their patients, could not be expected to include and govern the great variety of medicinal preparations which are prepared and sold under various names for domestic use. When, however, any British Pharmacopœia medicine is asked for, especially in the exact terms of the description given of the same in the "Pharmacopœia," it is usually necessary that the person should be supplied with the article prepared according to the formula given therein, unless adequate reason be shown to the contrary. Adequate reason may be so shown to the contrary if it be proved that the description in the Pharmacopœia is technically incorrect, or that more than one kind or quality of article are known in commerce by the description given. This is the case with respect to some drugs, but the majority of drugs and compounds

described in the British Pharmacopœia are substances with respect to which no question can arise of any other variety or quality than that described being known in commerce, and in such cases it is clearly an offence to sell under the official name any drug other than that which is described in the Pharmacopœia.

But it is to be remembered that the Pharmacopœia may, in addition to giving a formula for the manufacture of a compound, proceed to state what chemical tests shall be satisfied by the finished product. And in some instances, as in the case of the strong solution of ferric chloride in the British Pharmacopœia of 1898, these tests cannot be satisfied if the official formula be followed in preparing the compound. So it may happen that as the result of evaporation or other cause a drug at the time of sale may not have the same constitution as when it was made. In cases of this type also it is necessary to consider how far the "standards" of the British Pharmacopœia can be regarded as valid.

FLOUR.

Bleaching.—On July 31st, 1912, in the Hamilton Sheriff's Court, Sheriff Shennan gave a considered judgment after hearing a large amount of expert evidence in a prosecution in respect of bleached flour, from which the following are extracts:—"It is not proved that a proportion of nitrites amounting to 3·43 parts per million parts of flour so alters the nature, substance, and quality of flour as to alter its genuineness . . . Excess of nitrites, even in greater quantity than 3·43 parts per million, may in certain circumstances be acquired by flour through atmospheric or other conditions without affecting the genuineness of the flour or its nutritive value . . . Finding, in fact, as I do, that the flour has been bleached with peroxide of nitrogen, I have next to face the great subject of controversy in this case, viz., whether flour so bleached is genuine . . . My view is that the result of commercial bleaching so far as the evidence before me goes is merely to alter the colour to suit the taste of the consumer, without altering the nature, substance, and quality of the flour so as to make it a different article. So long as the nature, substance, and quality are not affected,

there is no law against the miller bleaching. The colour of the flours from various wheats varies, and therefore bleaching is resorted to to preserve uniformity." The county council of Lanarkshire decided not to appeal against this decision.

An important and lengthy report on the whole subject of the bleaching of flour by nitrogen peroxide and of the addition of so-called improvers to flour was made to the Local Government Board by Dr. J. M. Hamill in 1911 (Food Reports, No. 12). Dr. Hamill concluded that in the present state of knowledge it would be unwise to consider that the process of bleaching flour with nitrogen peroxide is attended by absolute freedom from risk, and he further expressed the opinion that the consumer of bleached flour cannot be said to receive any compensating benefit.

Improvers.—In the same report Dr. Hamill discusses the practice of adding phosphates and other so-called improvers to flour with the object of increasing its strength and water-absorbing capacity. His conclusions are distinctly unfavourable to the use of such improvers. Subsequently, in 1913 and 1914, the Hull stipendiary heard a very important prosecution under section 6 of the Act of 1875 in respect of the sale of flour certified to contain 6·3 parts of potassium persulphate per 100,000. After a very lengthy hearing, the stipendiary dismissed the information on the grounds (1) that the potassium persulphate was introduced in the course of the preparation of the flour as an article of commerce in a state fit for consumption; (2) that the addition did not prejudice the purchaser but actually improved the flour, was not put in to conceal inferior quality and was introduced in such a small quantity as to be wholly innocuous in its effects.

GROUND ALMONDS.

Oatmeal is sometimes added to almonds for the purpose of absorbing moisture in the process of grinding. In March, 1908, a summons was dismissed in the Glasgow Sheriff Court on the ground that this use of oatmeal is usual and necessary, but many leading firms declare that the addition of oatmeal should not be permitted, and that almonds may easily be ground without the use of any absorbent.

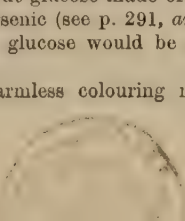
JAM AND MARMALADE.

Jams are often adulterated by the addition of other and cheaper fruits than those asked for. Thus "strawberry" and "raspberry" jams often consist largely of gooseberries, while the juice or pulp of apples is frequently added to plum and other jams. Jam makers are divided into two camps—those who state that there is no manner of need to mix the juice of one fruit with that of another, and those who allege that this practice constitutes a desirable improvement. Several convictions in respect of such mixtures have taken place in police courts. In December, 1913, at Marylebone Police Court, a stipendiary magistrate, convicting a retailer of raspberry jam containing apple pulp, after a series of sittings, stated in a considered judgment that he was satisfied that for a period of thirty or forty years the standard jam had been regarded as jam containing the best fruit with refined sugar only, and that the introduction of a fruit juice had always been regarded as an adulteration of the genuine article (*British Food Journal*, December, 1913).

At the Sittingbourne Petty Sessions a grocer was summoned for selling as plum jam a certain compound which consisted of a mixture of plum and apple. The inspector asked for *Steer's plum jam*, and the defendant pleaded that he got what he ask for, and that being sold under the above name it need not necessarily be composed of plum only. The magistrates, however, imposed a fine, as they considered that if jam was sold as *plum jam* it ought not to be a mixture of plum and apple, and that its sale was an offence under the statute (Analyst, Vol. IX., p. 50).

In making jam and marmalade glucose is often used instead of sugar, about 13 per cent. being an average proportion. This is said to prevent the growth of mildew, and in the case of marmalade it is now settled that the practice is unobjectionable (see *Smith* v. *Wisden* and *Wilson* v. *McCutcheon*, *ante*, p. 28), and probably this ruling would also apply to jam. But glucose made of impure materials sometimes contains arsenic (see p. 291, *ante*), and the sale of jam made of such glucose would be an offence under the Acts.

The addition of harmless colouring matter is usually



considered to be quite legitimate, but objection may fairly be taken to chemical preservatives, which are unnecessary for ordinary purposes of home trade if the jam is properly made. In March, 1912, a shopkeeper was convicted at Greenwich for selling blackcurrant jelly containing 5·6 grains of salicylic acid per pound.

LARD.

Pure lard is made exclusively from hog fat, and rarely contains more than a few tenths per cent. of water. A practice at one time existed of mixing about 5 per cent. of beef fat or stearin for stiffening purposes with imported American lard and the lard refined in this country from American lard. With regard to this practice, the Select Committee observe in their Report (p. 35) that "The evidence shows that the mixing of beef stearin with lard for the purpose referred to is appreciated by the public, while no question has been raised as to the wholesomeness of the compound. Such addition has, however, been regarded as an adulteration within the meaning of the Acts, and, owing to the prosecutions which have taken place, makers have been led to discard the addition of beef stearin." Lard substitutes, made of vegetable fats such as coco-nut or cottonseed oils, are sometimes sold as lard, and the addition of paraffin wax is not unknown.

MEAT-FOOD SUBSTANCES.

Sausages and many other meat-food substances are often preserved with borax or boric acid. There is much difference of opinion as to the proportions of preservative which may be considered to be respectively injurious to health or to the prejudice of a purchaser.

At the Burnley Quarter Sessions in 1908, the Recorder quashed a conviction under section 6 of the Sale of Food and Drugs Act, 1875, in respect of sausages containing 29 grains of boric acid per pound. The learned Recorder held in this case that there was no prejudice to the purchaser. And at Manchester a stipendiary dismissed a prosecution in respect of sausages containing as much as 70 grains of boric acid per pound. On the other hand, prosecutions have succeeded in courts of summary jurisdiction where the amount of

preservative in similar articles has been as little as 21·7 grains per pound.

Potted shrimps often contain substantial proportions of boric acid. A bench of magistrates recently dismissed a case where the amount was 71·4 grains per pound, and a conviction was recorded elsewhere in respect of a slightly higher proportion of preservative.

In a report to the Local Government Board (Food Reports, No. 6, 1908), Dr. A. W. J. MacFadden stated that the majority of canned and glass-packed meat foods were prepared without the use of any preservatives, and that it is neither desirable nor necessary that canned meats should remain among the already formidable list of foods in which boron or other preservatives may be present. With respect to sausages, pork-pies, mince-meats, brawns and the like, Dr. MacFadden remarks that a limit of 0·25 per cent. of boric acid (about 18 grains to a pound) would probably be ample to meet legitimate trade requirements.

Starch, usually in the form of rice flour, and bread are sometimes found in substantial quantities in potted meats. If the quantity be excessive this may be considered as an adulteration.

With respect to the use of sulphites and of formaldehyde for the preservation of meat-food substances, there is fairly general agreement that the use of these preservatives is undesirable and frequently harmful. Perishable meat-food substances and chilled meat prepared for a period of transit by sea extending to several weeks are frequently treated with formaldehyde for the purpose of preservation. Formaldehyde is a powerful disinfectant and has a harmful effect on digestion. For these reasons it seems clear that the presence of formaldehyde in such articles of food is both injurious to health and to the prejudice of the purchaser. The matter is dealt with in some detail by Dr. G. S. Buchanan and Dr. S. B. Schryver in a report to the Local Government Board (Food Reports, No. 9, 1909).

MILK.

Milk is an article which varies very considerably in composition, the difference arising partly from the breed of

the cow, and partly from the way in which the animal is fed and housed. There is also a perceptible difference between the milk given by the same cow at different times of the year. The quality of milk is often poorest about the second or third month after calving, and then improves steadily with advancing lactation. The fat content is usually lowest in May and June, and highest in December. The non-fatty solids are lowest in July, August and September, and highest in December and January. The afternoon's milking is generally richer in fat than the morning's; and this disparity is the more marked when the interval between the afternoon's and the next morning's milk is considerably greater than between the morning's and afternoon's milking, as during the longer interval some of the fat is reabsorbed. The intervals between the two daily milkings should be as nearly alike as practicable. The effect of uneven milkings on the non-fatty solids is less marked than is the case with the fat, and tends to be of a converse nature. The best opinion to-day appears to be that feeding makes less difference to the quality of the milk than used to be supposed.

In times of drought, the percentage of non-fatty solids tends to be a little low. Jersey cows often give milk which is especially rich in fat; Dutch cows' milk commonly contains a low percentage of fat. Though there is no doubt that individual cows, especially of some foreign breeds, sometimes give milk which fails to come up to the standard, the mixed milk of a herd of healthy cows is almost invariably well above the standard.

A large amount of valuable statistical and other information with reference to the composition of milk will be found in the Report and Minutes of Evidence of the Departmental Committee on Milk and Cream, 1901, and also in the "Journal of Agricultural Science," May, 1905.

The average percentage of non-fatty solids in milk from British Shorthorn cows is probably not less than 8·85 and of fat not less than 3·65. When this is borne in mind, it will be observed that the percentage of adulteration in a sample unfavourably reported on by the public analyst is usually greater than is indicated by a calculation based on the figures (of 8·5 and 3 per cent.) adopted by the Board of Agriculture in framing the Sale of Milk Regulations.

The most usual methods of adulterating milk are :—(1) the mixing of skimmed or separated milk with whole milk ; (2) the addition of water. The first method reduces the percentage of fat and slightly increases the percentage of non-fatty solids ; the second reduces the percentage of fat and also that of non-fatty solids.

Recently a process of manufacturing synthetically an artificial substitute for milk has been devised, the basis being casein obtained from the soya bean. To this basis fatty acids, sugars and salts are added in definite proportions, and emulsification is carried out.

Preservatives in milk, according to most authorities, are wholly unnecessary, and should not be permitted even in the smallest quantity. This view was emphatically expressed in the Annual Report of the Local Government Board for the year 1907—1908. Those most commonly employed are boric acid or borax, and formaldehyde ; a preparation of which the principal ingredient is an alkaline fluoride has also been placed on the market. Annatto, or some other harmless colouring matter, is very commonly used, and the addition of such colouring substances is not, as a rule, complained of ; but its object is sometimes to conceal inferior quality.

Buttermilk, which is largely used as an article of diet in some parts of the Kingdom, also varies greatly in composition, because a certain amount of water has often to be added to the milk in the process of butter making in order to facilitate the separation of the butter fat, and this quantity varies with the temperature of the air at the time of butter making. But an addition of more than 25 per cent. of water ought to be regarded as fraudulent, and even 25 per cent. ought only to be necessary under quite exceptional circumstances.

MUSTARD.

At Jedburgh, Scotland, before the sheriff, several grocers were summoned for selling certain quantities of Colman's mustard not of the nature, substance, or quality demanded. The defendants proved that it was not usual to sell the pure mustard unless specially asked for ; also if mustard was not mixed with some article to absorb the oil of the mustard, it

became lumpy by keeping, and was also too strong for table use. The sheriff dismissed the cases, stating that it was quite evident that when a customer asked for mustard he expected to get it mixed unless he specially asked for pure mustard (Analyst, Vol. VII., p. 91).

In *Sandys* v. *Markham* (1887), 41 J. P. 52, where mustard had been sold containing an admixture of flour, the justices found as a fact that 35 per cent. of flour was required for the preparation of mustard as an article of commerce in a fit state for consumption. As the case disclosed no evidence whatever to support such a finding, it was remitted to be re-stated.

As many persons prefer diluted mustard, to meet the difficulty, mustard containing an admixture of flour is generally described as "*mustard condiment*"; and there seems no doubt that it ought to be so described in order that no risk of a prosecution may arise. The Select Committee refused to express an opinion on the question, but stated: "It is obvious that an answer to this question is required in order to determine whether condiment mustard may be sold under the simple designation of mustard, or whether it should be labelled and sold as a mixture."

NON-ALCOHOLIC DRINKS.

Lime-juice cordial and other temperance beverages frequently contain small proportions of salicylic acid as a preservative. Metropolitan stipendiary magistrates have dismissed summonses in respect of lime-juice cordial under section 6 of the 1875 Act when the amount of salicylic acid has been about 6 grains per pint, in spite of the recommendation of the Departmental Committee on Food Preservatives in 1901 that salicylic acid should not be used in greater proportions than 1 grain per pint in liquid food.

Salicylic acid is employed for the prevention of alcoholic fermentation in sugar-sweetened drinks, rather than for the elimination of bacilli. Drinks sweetened with saccharin instead of sugar are not liable to alcoholic fermentation. It is held by some medical experts that salicylic acid, even in quite small proportions, has injurious effects on digestion. In 1913 and 1914 the Bedfordshire justices fined a number of retailers for the sale to the prejudice of the purchaser of

raisin wine containing 7·6 grains per pint and 9·62 grains per pint, and of orange wine containing 4·2 grains per pint of salicylic acid. The quantity of salicylic acid alleged by manufacturers of non-alcoholic wines to be requisite depends on the proportion of sugar in the wines. Trade experts have frequently stated in evidence that on the average 4 or 5 grains of salicylic acid per pint is a necessary amount. The only alternative would appear to be complete sterilisation in the bottle, or the use of saccharin in place of sugar.

PEPPER.

Pepper is liable to contain a small proportion of sand and earthy matter, which may have become mixed with it in the process of collection, preparation or grinding. Experts have stated that "although sand is not a natural constituent of pepper, a greater or less quantity becomes mixed with it in the process of collection or preparation, and we have found ground Penang pepper, which is the kind most extensively used in this country, to contain, as sold by some of the best wholesale houses, from 1·58 to 2·77 per cent. of such extraneous sandy matter, and ground Siam pepper, occasionally but not largely used, 3·27 per cent." ; and that the last-named quantity is a reasonable margin for the presence of unavoidable sandy matter.

Pepper is liable to be adulterated by the addition of rice or other starch, of small proportions of turmeric and of ground olive-stones. In a recent case, 0·2 per cent. of lead chromate, a poisonous chemical used as a colouring agent, was found.

White pepper is commonly understood to consist of the berries of the black pepper fruit, from which some portion of the pericarp or husk has been removed. Much controversy has arisen over the proportion of husk which should be so removed. Prosecutions have been instituted recently in Lancashire in respect of white pepper stated to contain from 10 to 15 per cent. of husk, the prosecution contending that 2 per cent. is the maximum allowable. Against this, it is urged that some of the layers of the husk contain relatively large proportions of resin, oil, and piperin, that the husk is more pungent than the berry, and that black pepper is

therefore more valuable as a condiment than white pepper, although the latter seems to be more costly and more esteemed by the public. And it seems to be a trade practice to grade peppers by processes of decorticating and sifting.

In the spring of 1914, the Liverpool stipendiary adopted the view that white pepper should not contain more than 2 per cent. or 3 per cent. of husk, and imposed several fines. A similar view was taken by the Blackburn Borough Bench, but this decision was reversed by the Recorder at Blackburn quarter sessions.

RAISINS.

Valentia and Sultana raisins are frequently treated with sulphur dioxide in order to make the colour paler and more uniform. It is usually found, however, that by the time the raisins reach the hands of the consumer no trace of the chemical remains to be detected by analysis.

RICE AND PEARL BARLEY.

In a report to the Local Government Board (Food Reports, No. 8, 1909), Dr. J. M. Hamill states that rice is often treated or "faced" with mineral substances, such as talc, in order to give it a brighter and more polished appearance. He recommends that not more than 0·5 per cent. of such added mineral matter should be permitted in rice. It must be remembered that rice naturally contains a small percentage of mineral constituents. Pearl barley is similarly liable to be faced with talc, and there have been several prosecutions arising therefrom.

SAGO.

It appears that in some districts a particular form of tapioca, often called "pearl seed tapioca," is sold as sago. This is probably not done for any fraudulent purpose, and there is reason to believe that in those districts an ordinary purchaser asking for sago would expect to get this tapioca and would refuse the genuine sago if it were offered. Under these circumstances this article may, of course, be legitimately sold as sago, and a decision to this effect was given by the King's Bench Division in the case of *Sandys* v. *Rhodes* (1903), 67 J. P. 352.

TINNED VEGETABLES.

These are sometimes coloured green with copper salts, which are, of course, highly injurious to health if swallowed in excessive quantity. The Departmental Committee of 1899 recommended that the use of copper salts in colouring preserved foods should be absolutely prohibited. But in the case of *Friend* v. *Mapp* (1904), 68 J. P. 589, the High Court refused to disturb a finding by justices that a purchaser of "preserved peas" was not prejudiced when the peas contained as much as 2·55 grains of copper sulphate per pound.

VINEGAR.

Considerable quantities of artificial vinegar, consisting frequently of a dilute and coloured solution of acetic acid, are sold simply as "vinegar." Other questionable operations include the addition of sulphuric acid, sometimes to the extent of 0·2 per cent., and the sale of vinegar diluted so as to contain too small a proportion of acetic acid. There is no doubt that artificial vinegar should not be sold as "malt vinegar"; but opinions in the vinegar trade differ as to the propriety of applying the term "vinegar" without qualification to the artificially prepared substances. In a report to the Local Government Board (Food Reports, No. 5, 1908), Dr. J. M. Hamill remarks: "It appears to me to be in the interests of the consumer that vinegar which has been prepared by colouring and flavouring a solution of acetic acid should not be represented as merely 'vinegar' or as 'malt vinegar,' but should be sold under some designation which, if it retains the word 'vinegar,' should also make the nature of the product apparent. Artificial vinegars as a class are inferior in taste and flavour to vinegars which are solely the product of alcoholic and acetous fermentation of the saccharine liquors usually employed for the purpose, and in ordinary circumstances the nature of these artificial vinegars can be ascertained by chemical examination." Dr. Hamill further states that the presence of any sulphuric acid in vinegar must be regarded as an adulteration, and he adds that there are substantial reasons for maintaining that all genuine vinegars should contain at least 4 per cent. of

acetic acid. Dr. Hamill's report has been endorsed by the Local Government Board. In a letter addressed to the trade in December, 1911, the Local Government Board expressed the opinion that malt vinegar is vinegar derived wholly from malted barley or wholly from cereals, the starch of which has been saccharified by the diastase of malt; and that "vinegar" is "a liquid derived wholly from alcoholic and acetous fermentations; it shall contain not less than 4 grammes of acetic acid (CH_3COOH) in 100 cubic centimetres of vinegar, it shall not contain arsenic in amounts exceeding 0·0143 milligrammes in 100 cubic centimetres of vinegar, nor sulphuric or other mineral acid, lead, or copper; nor shall it contain any foreign substance or colouring matter except caramel." The United States Department of Agriculture also require vinegar to contain not less than 4 per cent. of acetic acid. Vinegar is liable to metallic contamination, especially with copper, and preservatives such as bisulphites are sometimes used.

YEAST.

It is the common practice to mix a certain proportion of starch with yeast as a preservative, and the presence of the starch is not regarded as an adulteration.

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